

**A RESOLUTION AUTHORIZING THE MAYOR AND DIRECTOR OF FINANCE TO ENTER INTO AN ANCILLARY AGREEMENT TO THE DEVELOPMENT AND CONSTRUCTION AGREEMENT WITH PULTE HOMES OF OHIO LLC, AND DECLARING AN EMERGENCY**

WHEREAS, Richfield Furnace Run Associates LLC (“Richfield Run”), Water and Sewer, LLC and the Village entered into a Development and Construction Agreement dated December 18, 2020, wherein Richfield Run, Water and Sewer, LLC and the Village agreed to complete certain improvements for the benefit of the New Briarwood Subdivision (the “Development Agreement”); and

WHEREAS, the Development Agreement generally requires the prior written consent of the Village to any assignment by Richfield Run of its rights and obligations thereunder, but provides for an assignment to Pulte Homes of Ohio LLC (“Pulte”) without Village approval pursuant to the terms set forth therein; and

WHEREAS, Pulte and the Village have agreed to add, clarify and amend certain terms in the Development Agreement as hereinafter set forth in this Agreement; and

WHEREAS, the Council determines that it is proper and in the best interests of the Village to authorize the Mayor and Director of Finance to enter into the Ancillary Agreement to the Development and Construction Agreement with Pulte.

NOW, THEREFORE, BE IT RESOLVED by the Council of the Village of the Richfield, County of Summit, State of Ohio that:

SECTION 1. The Mayor and Director of Finance are hereby authorized and directed to enter into the Ancillary Agreement to the Development and Construction Agreement with Pulte Homes of Ohio LLC substantially in accordance with the agreement attached hereto as Exhibit “A” and expressly incorporated herein by reference.


SECTION 2. It is found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal action, were in meetings open to the public, in compliance with legal requirements, including Section 121.22 of the Ohio Revised Code.

SECTION 3. This Resolution is hereby declared to be an emergency measure necessary for the immediate preservation of the public health, safety and welfare and for the further reason that it is immediately necessary to authorize the Ancillary Agreement to the Development and Construction Agreement with Pulte in order to meet the deadline established by the parties; wherefore, provided this Resolution receives the affirmative vote of two-thirds of the members of Council elected or appointed, it shall take effect immediately upon its passage and execution by the Mayor;

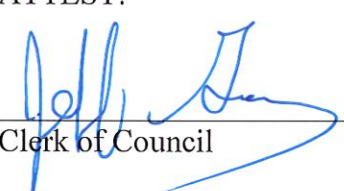
otherwise, it shall take effect and be in force from and after the earliest period allowed by law.

PASSED: 7-27-21

  
\_\_\_\_\_  
President of Council

  
\_\_\_\_\_  
Mayor

Dated: 7/27/2021

ATTEST:  
  
\_\_\_\_\_  
Clerk of Council

**ANCILLARY AGREEMENT TO  
DEVELOPMENT AND CONSTRUCTION AGREEMENT**

This ANCILLARY AGREEMENT TO DEVELOPMENT AND CONSTRUCTION AGREEMENT (“**Agreement**”) is made and entered into as of the date set forth below by and between **PULTE HOMES OF OHIO LLC** (“**Pulte**”) and the **VILLAGE OF RICHFIELD, OHIO** (the “**Village**”).

**WHEREAS**, Richfield Furnace Run Associates LLC (“**Richfield Run**”), Water and Sewer, LLC and the Village entered into a Development and Construction Agreement dated December 18, 2020, wherein Richfield Run, Water and Sewer, LLC and the Village agreed to complete certain improvements for the benefit of the New Briarwood Subdivision (the “**Development Agreement**”);

**WHEREAS**, the Development Agreement generally requires the prior written consent of the Village to any assignment by Richfield Run of its rights and obligations thereunder, but provides for an assignment to Pulte without Village approval pursuant to the terms set forth therein; and

**WHEREAS**, Pulte and the Village have agreed to add, clarify and amend certain terms in the Development Agreement as hereinafter set forth in this Agreement.

**NOW, THEREFORE**, for and in consideration of Ten Dollars (\$10.00) and other valuable consideration and the mutual benefits contained in the Development Agreement and this Agreement, the receipt and legal sufficiency of which are hereby acknowledged, the Village and Pulte hereby agree as follows:

1. **Definitions.** All initially capitalized terms used but not defined or modified herein shall have the meanings ascribed thereto in the Development Agreement.
2. **Assignment.** From and after assignment of Richfield Run’s rights and obligations under the Development Agreement to Pulte, Pulte shall have the right to enforce the terms and conditions set forth in the Development Agreement as if it were the Developer, as defined therein, together with the responsibility to perform all obligations of the Developer under the Development Agreement as if it were the Developer, as defined therein.
3. **New Briarwood Sanitary Extension.** The third Whereas clause and Section 10 of the

Development Agreement describes the New Briarwood Sanitary Extension, which consists of a new gravity sanitary sewer line of approximately 379+/- feet from the New Briarwood Subdivision to the pump station at the terminus of the New Sanitary Sewer (as further described therein). The provisions with regard to the New Briarwood Sanitary Extension are hereby amended as follows:

- (a) The New Briarwood Sanitary Extension will be located within a right-of-way. Pulte, at its option, may assume responsibility to complete the New Briarwood Sanitary Extension, or Pulte may notify the Village that Pulte desires that the Village complete the New Briarwood Sanitary Extension as part of the New Sanitary Sewer, in which event the Village shall complete the New Briarwood Sanitary Extension;
- (b) In the event that Pulte notifies the Village that the Village shall complete the New Briarwood Sanitary Extension, then the Village shall bid the cost of the New Briarwood Sanitary Extension as part of the New Sanitary Sewer; provided, however, the New Briarwood Sanitary Extension shall be shown as a separate cost;
- (c) If the Village is responsible to complete the New Briarwood Sanitary Extension, then prior to the Village's award of a contract for the installation of the New Briarwood Sanitary Extension, the cost of such shall be provided to Pulte, and Pulte shall have the opportunity to comment upon such cost within five (5) days following receipt thereof; and the Village may, in its sole discretion, permit Pulte to perform the installation of the New Briarwood Sanitary Extension and the New Sanitary Sewer and its associated pump stations;
- (d) If the Village is responsible to complete the New Briarwood Sanitary Extension, then subject to the exercise of the provisions in subpart (c) of this Section 3, the Village shall be responsible to have the New Briarwood Sanitary Extension installed and completed, and shall do so at the appropriate time during the Village's completion of the New Sanitary Sewer;
- (e) Pulte (upon assignment of the Development Agreement) shall be responsible for all costs associated with designing, permitting and installing the New Briarwood Sanitary Extension (the "New Extension Costs"). If the Village completes the New Briarwood Sanitary Extension, then the Village shall invoice Pulte for the actual New Extension Costs within a reasonable time after such New Extension Costs are due and payable by the Village to the applicable contractor(s). If the Village has already paid the New Extension Costs to the applicable contractor(s), then Pulte shall reimburse the Village within ten (10) days following receipt of such invoice, and if the Village has not yet paid the New Extension Costs to the applicable contractor(s), then Pulte may pay such New Extension Costs directly to the applicable contractor(s); and
- (f) It is the intent of the Village and Pulte that the New Extension Costs shall be included in the TIF, and that Pulte shall be reimbursed for the New Extension Costs with the funds from the TIF. If the funds from the TIF are insufficient to pay for the New Extension Costs, then the New Extension Costs shall be included in the assessments (set forth in Section 13 of the Development Agreement), and Pulte shall be reimbursed

for the New Extension Costs from the assessments.

4. **Timing for Sewer Extension.** In order for Pulte to complete the Sale on or about September 9, 2021 (the “Closing Date”), and subject to the exercise of the provisions of Section 3 (c) of this Agreement, it is essential that certain timeframes be established for the Village to commence and complete the Briarwood Sanitary Sewer Extension and New Briarwood Sanitary Sewer Extension (the Briarwood Sanitary Sewer Extension and New Briarwood Sanitary Sewer Extension, including the associated pump stations, shall be collectively known as the “Sewer Extensions”). Therefore, the Village agrees to the following timeframes:

- (a) Prior to obtaining any bids from third-party contractors for the Sewer Extensions, the Village agrees that it shall work collaboratively with such potential third-party contractors to analyze the bidding process, costs, constructability and to determine any portions of the process of bidding and completing the Sewer Extensions that could take longer than anticipated or cause any delays;
- (b) The Village shall obtain all third-party contractor bids to complete the Sewer Extensions no later than thirty (30) days prior to the Closing Date (being August 10, 2021). The Village shall require that each bid include a confirmation that such contractor can timely obtain the required components of the Sewer Extensions (including the pump stations) and list any issues with completing the Sewer Extensions that may take longer than anticipated or cause any delays, and acknowledge the timeframe to complete the Sewer Extensions and represent that such contractor will be able to complete the Sewer Extensions in accordance with such timeframe. Immediately upon receipt, the Engineer for the Village shall evaluate each bid for quality and completeness;
- (c) The Engineer for the Village shall provide a formal recommendation for approval of a third-party contractor bid to the Village Council no later than August 16, 2021;
- (d) The Village shall award the contract to a third-party contractor to complete the Sewer Extensions no later than September 8, 2021;
- (e) The Village shall cause commencement of material work by the third-party contractor involving the Sewer Extensions no later than ten (10) days following the Closing Date; and
- (f) The Village shall cause the third-party contractor to complete the Sewer Extensions and the New Sanitary Sewer shall be in a condition to service the New Briarwood Subdivision no later than March 15, 2022.

The Village acknowledges that shortly after completing the Sale, Pulte intends to commence the construction of two (2) model homes on lots within the New Briarwood Subdivision for Pulte to utilize as for customers to view the products that Pulte will build within the New Briarwood Subdivision (the “Model Homes”). In the event that the Village has not completed the Sanitary Sewer Extension and the associated pump station known as “Pumping Station No. 1

located at 3857 Briarwood Road prior to Pulte completing the Model Home, then the Village agrees that it will allow Pulte to utilize the wet well located within such pump station for storing waste water from the Model Homes until the Village fully completes the Sewer Extensions and associated pump station. In such event, Pulte shall be responsible for all costs associated with pumping out the wet well until the Village completes the New Briarwood Sanitary Sewer Extension (and associated pump station).

5. **Advance Actions.** Provided that Pulte has appropriately and timely submitted the Phase I Improvement Plans, the Village agrees to the following in order to ensure that Pulte may commence the New Briarwood Subdivision in a timely manner (anticipated to be on or about September 9, 2021):

- (a) The Village shall execute the cover page of the Phase I Improvement Plans no later than July 15, 2021, and such execution shall be in a manner as to allow Pulte to submit for a “Permit-to-Install” from the Ohio Environmental Protection Agency;
- (b) On or about August 10, 2021, Pulte agrees to commence tree stump removal activities in Phase I of the New Briarwood Subdivision, but only after having secured all required permits from the Summit County Soil and Water Agency and any other jurisdiction requiring a permit therefor;
- (c) The Village shall conduct a “pre-construction meeting” with Pulte for the New Briarwood Subdivision no later than August 10, 2021;
- (d) To the extent the Village has the legal authority to do issue demolition permits, it shall issue a demolition permit for the dwelling currently located within the New Briarwood Subdivision no later than August 15, 2021, which permit shall be conditioned upon acceptance of annexation of the Property into the Village and Pulte acquiring the Property; and
- (e) Provided that Pulte has appropriately and timely submitted the shop drawings for the storm and precast concrete structures associated with the storm water system to be constructed within the New Briarwood Subdivision, then the Village agrees that it shall approve such shop drawings no later than five (5) business days following the Village approving the Phase I Improvement Plans.

6. **Permits.** Provided that Pulte has appropriately and timely submitted the Phase I Improvement Plans, the Village agrees as follows:

- (a) Upon installation of roadway paving in Phase I, the Village shall issue zoning permits, an early letter for Summit County Building Department and sanitary permits for two (2) Model Homes prior to the recordation of the Phase I Plat for dedication; and
- (b) The Village shall issue production building permits for Phase I no later than February 5, 2022.

7. **Tax Increment Financing.** As set forth in the Agreement, the Village is establishing the TIF to pay for certain costs associated with the certain public improvements that will involve the New Briarwood Subdivision. The parties to this Agreement desire to clarify the intent and use of the TIF. The parties will utilize their best efforts to utilize the TIF to pay for the following public improvements which benefit the New Briarwood Subdivision and available TIF funds will be used in the following order of priority:

- (i) the Offsite Water Improvements, including the Water Main;
- (ii) the SR 303 Improvements, including the Road Lowering and Road Widening;
- (iii) the Bridge Cost Difference (as defined below); and
- (iv) the New Sanitary System (Briarwood Sanitary Sewer Extension and New Briarwood Sanitary Sewer Extension).

The parties acknowledge the Village's right to use any TIF funds remaining after the four (4) priority improvements above are paid for to repair or replace those portions of Water and Sewer LLC's existing sanitary sewer system that the Village in its sole discretion deems necessary to repair or replace.

Furthermore, since the TIF is intended to be utilized for the Sewer Extension, the parties agree to cooperate with each other to establish the assessments (set forth in Section 13 of the Development Agreement) at the lowest amount possible, and to fully utilize any available TIF funds for the Sewer Extension prior to establishing such assessments. The Village agrees that the appropriate funds from the TIF shall be paid to Pulte upon satisfactory completion of each, if any (or as otherwise specified in the MOU as defined below), of the public improvements for which Pulte is responsible and not payable over a period of time, and that the "service payments" from the TIF shall be utilized to pay the bondholders involved with the TIF.

8. **Home Design Approval.** Pulte intends to build two (2) different series of home products within the New Briarwood Subdivision, with each series containing at least four (4) unique floor plans and multiple elevation options for each floor plan. One of the series of home products that Pulte intends to build within the New Briarwood Subdivision has front elevations that were previously approved and utilized in the Everett Point Subdivision (also in the Village). In addition, the other series of home products that Pulte intends to build within the New Briarwood Subdivision (that have not yet been approved by the Village) is larger than the previously approved series and are intended to be added for placement on the 80' wide lots. The front elevations on the series of home products that have not yet been approved by the Village shall be similar in architectural style and character to the elevations for the series that were already approved for the Everett Point Subdivision.

Pulte agrees that, for each series of home products that Pulte intends to build within the New Briarwood Subdivision, Pulte shall submit to the Village an Architectural Design Guideline and Rule Set outlining each respective product series models (the "**Guidelines**"). The Guidelines will establish the standards for each enhanced front elevation and the architectural standards for the side and rear elevations of each series of home products. The Guidelines will also designate lots with "high visual impact elevations" that will require unique architectural treatment on specific lots as outlined in the Guidelines. The Guidelines shall also present the monotony and similarity

rule set to be utilized to ensure architectural variety and a pleasing streetscape (i.e., parameters to prevent monotony of homes on any given street). The Guidelines shall be subject to the approval of the Village, which approval shall not be unreasonably withheld or delayed, and upon approval shall be incorporated into the approval of the Final Development Plan for the New Briarwood Subdivision.

Upon submittal by Pulte to the Village of the finalized single-family home design plans for which Pulte intends to construct within the New Briarwood Subdivision (including all elevations and design plans), the Village agrees that the Architectural Review Board of the Village shall be limited to providing comments to the proposed designs elevations/plans conformance to the approved Guidelines.

9. **SR 303 Improvements.** The Village hereby acknowledges that the SR 303 Improvements, including the Road Lowering and Road Widening shall not be commenced until such time as Pulte commences material development activities within Phase 2 of the New Briarwood Subdivision.

10. **Aerial Bridge.** Pursuant to the terms of the Memorandum of Understanding between the Village and Pulte dated June 15, 2021 (the “**MOU**”), Pulte acknowledged that it has agreed to construct an aerial bridge from the existing platted right-of-way at Sawbridge Road and Scanwood Drive to the entrance of the New Briarwood Subdivision (the “**Bridge**”). With regard to the Bridge, all plans and specifications shall be separately submitted by Pulte to the Village. Furthermore, Pulte shall be reimbursed for the Bridge Cost Difference, as such term is defined in the MOU, from the TIF funds.

11. **Successors and Assigns.** This Agreement is binding upon, and shall inure to the benefit of, the parties hereto and their respective successors and assigns.

12. **Ratification.** The parties acknowledge that the terms set forth herein shall modify the Development Agreement. Except as modified and amended hereby, the Development Agreement has not been modified or amended, is hereby ratified and confirmed by the Village and Pulte on and subject to each of the terms, provisions and conditions thereof, as amended hereby, and is hereby declared by Village and Pulte to be in full force and effect. In the event of a discrepancy between this Agreement and the Development Agreement, the provisions of this Agreement shall control.

13. **Counterparts; Electronic Transmission.** This Agreement may be executed in multiple counterparts, each of which shall be deemed an original and all of which, collectively, shall be one and the same instrument. Further, the parties agree that this Agreement may be executed and delivered by electronic signature and transmission.

[Remainder of page is intentionally left blank. Signatures appear on the following pages.]



IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth below.

**PULTE HOMES OF OHIO LLC**

By: \_\_\_\_\_  
Brad Piroli, Vice President of Land Acquisition

Date: \_\_\_\_\_

STATE OF OHIO )  
 ) SS:  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_, 2021 by Brad Piroli, Vice President of Land Acquisition of Pulte Homes of Ohio LLC, an Ohio limited liability company, on behalf of the limited liability company.

\_\_\_\_\_  
Notary Public

