

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

WHEREAS, Richfield Furnace Run Associates LLC, Water and Sewer LLC and the Village entered into a Development and Construction Agreement dated December 18, 2020, as modified by the First Amendment to Development and Construction Agreement dated August 6, 2021 wherein Richfield Run, Water and Sewer, and the Village agreed to complete certain improvements for the benefit of the New Briarwood Subdivision; and

WHEREAS, the Development Agreement was assigned, clarified, and amended pursuant to that certain Ancillary Agreement to Development and Construction Agreement executed by and between Pulte and the Village, dated July 28, 2021; and

WHEREAS, pursuant to the Ancillary Agreement, Pulte has certain obligations to construct improvements for the benefit of the New Briarwood Subdivision and surrounding areas; and

WHEREAS, the Village intends to establish a tax increment financing district known as the Brecksville Road/State Route 303 Incentive District under and in accordance with Ohio Revised Code Sections 5709.40, 5709.42 and 5709.43 pursuant to Ordinance No. 95-2021, which was adopted by the Village on October \_\_, 2021; and

WHEREAS, Pulte and the Village desire to describe more specifically their respective rights and obligations with respect to the payment of costs incurred in connection with the Development from the Service Payments and Property Tax Rollback Payments (each as defined in the TIF Ordinance) derived from the Incentive District and paid to the Village pursuant to the TIF Ordinance and the TIF Act; and

WHEREAS, this Council has determined that entering into the Reimbursement Agreement with Pulte Homes of Ohio LLC is necessary and proper and in the best interests of the Village of Richfield.

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

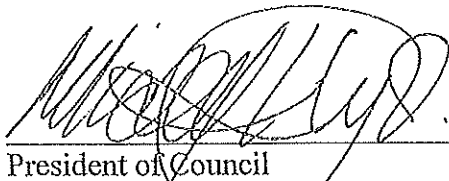
SECTION 1. The Mayor and Director of Finance are hereby directed and authorized to enter into the Reimbursement Agreement with Pulte Homes of Ohio LLC under substantially the same terms as the Reimbursement Agreement attached hereto as Exhibit "A" and incorporated fully herein by reference, subject to final approval of the Director of Law.


SECTION 2. It is found and determined that all formal actions of this Council concerning and relating to the adoption of this Resolution were adopted in an open meeting of this

Council, and that all deliberations of this Council and any of its committees that resulted in such formal action were in meetings open to the public, in compliance with all legal requirements including Section 121.22 of the Ohio Revised Code.

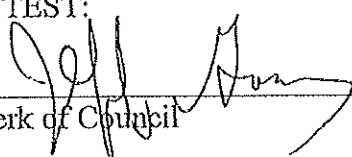
SECTION 3. This Resolution is hereby declared to be an emergency measure necessary for the immediate preservation of the public health, safety and welfare and for the further reason that it is immediately necessary to execute the Agreement in order to meet the deadlines established by the parties and to ensure the viability of the development project; 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: 10-21-2021

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

  
\_\_\_\_\_  
Mayor

Dated: 10/21/2021

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

## REIMBURSEMENT AGREEMENT

This REIMBURSEMENT AGREEMENT (“**Agreement**”) is made and entered into as of October \_\_, 2021 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, as modified by the First Amendment to 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 was assigned, clarified and amended pursuant to that certain Ancillary Agreement to Development and Construction Agreement executed by and between Pulte and the Village, dated July 28, 2021 (the “**Ancillary Agreement**”); and

**WHEREAS**, pursuant to the Ancillary Agreement, and as further provided herein, Pulte has certain obligations to construct improvements for the benefit of the New Briarwood Subdivision and surrounding areas; and

**WHEREAS**, as contemplated in the Development Agreement and Ancillary Agreement, the Village [has established][intends to establish] a tax increment financing district known as the Brecksville Road/State Route 303 Incentive District (the “**Incentive District**”) under and in accordance with Ohio Revised Code Sections 5709.40, 5709.42 and 5709.43 (collectively, the “**TIF Act**”), pursuant to Ordinance No. 95-2021 [adopted by the Village on -----] (the “**TIF Ordinance**”) in order to provide funds to pay the costs of the Sewer Extensions, the New Sanitary Sewer, the SR 303 Improvements as shown on Exhibit “K” to the Development Agreement, the costs of the Offsite Water Improvement Plan as described in Exhibit “J” to the Development Agreement, and the Bridge Cost Difference, as well as other eligible costs as provided in and permitted under the TIF Act; and

**WHEREAS**, Pulte and the Village desire to describe more specifically their respective rights and obligations with respect to the payment of costs incurred in connection with the Development from the Service Payments and Property Tax Rollback Payments (each as defined in the TIF Ordinance) derived from the Incentive District and paid to the Village pursuant to the TIF Ordinance and the TIF Act.

**NOW, THEREFORE**, for and in consideration of Ten Dollars (\$10.00) and other valuable consideration and the mutual benefits contained in the Development Agreement, the Ancillary 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 and in the Ancillary

Agreement.

2. **Construction Obligations.** In order to ensure timely completion of the public infrastructure improvements, Pulte hereby acknowledges primary responsibility for the construction of all of the following components of the Development as defined and further described in the Development Agreement and Ancillary Agreement (collectively, the “**Pulte Infrastructure Improvements**”):

- a. The Offsite Water Improvements, including the Water Main;
- b. The SR 303 Improvements, including the Road Lowering and Road Widening;
- c. The Bridge (also described in the Memorandum of Understanding between the Village and Pulte dated June 15, 2021); and
- d. New Briarwood Sanitary Sewer Extension (which consists of a new gravity sanitary sewer line of approximately 379+/- feet).

Pulte shall undertake all steps necessary to complete the construction of the Pulte Infrastructure Improvements, in accordance with all required permits and approvals from the Village. The Village agrees to promptly review all applications, drawings and submissions from Pulte in connection with the construction of the Pulte Infrastructure Improvements and diligently proceed with the issuance of permits as necessary so as not to impede the orderly and timely completion of the Pulte Infrastructure Improvements.

For avoidance of doubt, the Pulte Infrastructure Improvements to be completed by Pulte do not include the Briarwood Sanitary Sewer Extension, or the repair and replacement of the existing Briarwood sanitary sewer lines (such repair and replacement referred to herein as the “**Donated Line Maintenance**”, and together with the Briarwood Sanitary Sewer Extension, collectively, “**Village Infrastructure Improvements**”). The Village shall be responsible for completion and payment of the costs of the Village Infrastructure Improvements. As set forth in the Ancillary Agreement, Pulte had the choice to complete the New Briarwood Sanitary Extension, and has chosen to do so; provided, however, the Briarwood Sanitary Sewer Extension (including the installation of the force main and two (2) pumping stations) and any repairs or replacements of the existing Briarwood sanitary sewer lines, remains the responsibility of the Village, except as provided and/or contemplated in Section 3 below.

3. **Briarwood Sanitary Sewer Extension.** The Village acknowledges its responsibilities with regard to the Briarwood Sanitary Sewer Extension, including the installation of the force main and two (2) pumping stations, as set forth in the Ancillary Agreement, and although the Village is delayed with regard to the timeframes set forth in the Ancillary Agreement, the Village shall utilize its best efforts to complete the tasks set forth in the Ancillary Agreement in a timely manner. Specifically, the Village has undertaken and passed certain legislation to allow the Village to directly order materials and parts for the Briarwood Sanitary Sewer Extension that have long-lead times. Additionally, the Village and Pulte shall work collaboratively to minimize the possibility of any further schedule delays, recognizing that supply chain issues, among others, may impact the

schedule. As set forth in the Ancillary Agreement and specifically involving the Briarwood Sanitary Sewer Extension, the Village was required to complete certain actions on specific dates; provided, however, such dates are amended, and actions supplemented as follows:

- (a) The Village shall order such long lead-time items as may, on or before November 2, 2021, be agreed by the parties, which include pumps, electrical components, and generator by November 16, 2021;
- (b) The Village shall solicit and require submission of all third-party contractor bids to complete the Briarwood Sanitary Sewer Extension no later than December 3, 2021;
- (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 December 15, 2021;
- (d) The Village shall award the contract to a third-party contractor to complete the Briarwood Sanitary Sewer Extension no later than December 30, 2021;
- (e) The Village shall use best efforts to cause commencement of material work by the third-party contractor involving the Briarwood Sanitary Sewer Extension no later than January 31, 2022; and
- (f) The Village shall provide in its contract for the Briarwood Sanitary Sewer Extension that the Briarwood Sanitary Sewer Extension shall be in a condition to service the New Briarwood Subdivision no later than June 30, 2022, subject to force majeure (and any delays relative to any required special assessment proceedings).

At no cost to the Village, Pulte may provide construction and project management services for the Briarwood Sanitary Extension to facilitate a timely completion thereof. Furthermore, in the event that the Village is unable to complete the tasks above by such dates, Pulte shall have the option (at its sole discretion) to cause such tasks to be completed, as the construction manager for the Village, provided, however, the Village shall reimburse Pulte for any direct costs incurred by Pulte associated therewith, such costs to be deemed part of Pulte's costs associated with the New Briarwood Sanitary Sewer Extension. Pulte acknowledges that the Village cannot guarantee (and is not guaranteeing) completion of the Village Infrastructure Improvements on the timeline desired by Pulte, and should the Village be unable to meet the foregoing dates, such failure shall not give rise to any claim of breach of contract. Instead, Pulte and the Village agree, should the Village be unable to meet the aforesaid dates, they will cooperatively work together to find the most appropriate solution to implement the Briarwood Sanitary Extension in a timely manner, including (without limitation) executing such further agreements to permit Pulte to facilitate such completion.

**4. Pricing; Bidding; Dedication.** Pulte shall promptly obtain formal proposals and engineers' estimates for each component of the Pulte Infrastructure Improvements and submit copies to the Village Engineer for review. The proposals and estimates shall be based on the approved plans and specifications. Pulte shall not accept any bid from a contractor who has been barred from doing business within the Village, or from any contractor for whom the Village has advised Pulte in writing that such contractor is the subject of a dispute with the Village. Upon completion of any portion of the Pulte Infrastructure Improvements, Pulte shall submit the final actual cost for payment to the Village, which may differ from the proposals and estimates based upon various factors, including unforeseen events or the general increase in pricing (any difference between the estimates and the actual cost shall be detailed by Pulte). Such final cost submission

shall include paid invoices and any other supporting documents reasonably requested by the Village.

Pulte shall enter into all contracts for the construction of the Pulte Infrastructure Improvements and shall be solely responsible (as between the Village and Pulte) for timely payment, directly to the contractors, of the costs of construction of the Pulte Infrastructure Improvements. The Village may, at the request of Pulte, assist in construction by ordering long lead-time items, as agreed by and between the Village and Pulte, in order to meet construction deadlines. In addition, the Village shall assist in obtaining any required rights-of-way, and shall provide Pulte with access to existing or future rights-of-way and/or easements held by the Village for construction of the Public Infrastructure Improvements, such access to be pursuant to standard agreements executed by contractors with the Village. Should the Village order such items and/or obtain rights-of-way, Pulte shall promptly reimburse the Village for all costs incurred by the Village in connection therewith, which costs shall constitute part of the Reimbursable Costs (as defined below).

Promptly following completion of each component of the above referenced Pulte Infrastructure Improvements, Pulte shall commence the process to dedicate all of the Pulte Infrastructure Improvements to the Village, and shall thereafter pursue the same to completion. The Village agrees that it will accept the Pulte Infrastructure Improvements for dedication upon completion of the same, provided that the same are constructed in accordance with the approved plans, specifications and permits, that all costs in connection therewith have been fully paid and such Pulte Infrastructure Improvements is free of liens, and that the dedication is upon and subject to the Village's standard terms and conditions.

**5. Invoices.** Upon completion of any portion of the Pulte Infrastructure Improvements, Pulte shall provide invoices for the costs incurred in connection therewith to the Village Engineer and Village Planning Director, and at the request of either the Village Engineer or the Village Planning Director shall also provide such official with proof of payment of such invoices along with lien waivers from each recipient of such payment. Invoices submitted in connection with the construction of the Bridge shall identify which amounts contained thereon are part of the Bridge Cost Difference (as defined in the Ancillary Agreement). Thereafter, within thirty (30) days of receipt of such paid invoices and any requested payment information, the Village shall certify the amount of each such payment which it deems eligible for reimbursement pursuant to the TIF Act and the TIF Ordinance and, with respect to the construction of the Bridge, which shall only include the Bridge Cost Difference (calculated as provided in the Ancillary Agreement). Amounts which are so certified by the Village are referred to as "**Reimbursable Costs**".

**6. Reimbursement.** The Village agrees to reimburse Pulte for the amount of the Reimbursable Costs, plus interest accrued on such Reimbursable Costs from the date of certification by the Village as a Reimbursable Cost until payment at a simple interest rate of 1% percent, which reimbursement shall be payable solely from the amounts deposited into the TIF Fund created pursuant to the TIF Ordinance, minus a processing fee payable to the Village to defray the costs of maintaining and administering the TIF Fund equal to one percent (1%) of the revenues deposited into the TIF Fund (the "**Village Processing Fee**"). Amounts on deposit in the TIF Fund, less the Village Processing Fee, shall be applied in the following order of priority:

- a. The Offsite Water Improvements, including the Water Main;
- b. The SR 303 Improvements, including the Road Lowering and Road Widening;
- c. The Bridge Cost Difference ;
- d. The Briarwood Sanitary Sewer Extension;
- e. The New Briarwood Sanitary Sewer Extension; and
- f. The Donated Line Maintenance.

Any grants received by the Village for payment of any Reimbursable Costs, or for payment of any other costs of the either the Village Infrastructure Improvements or the Pulte Infrastructure Improvements, shall be applied to payment of such costs, either through direct payment of such costs as incurred or by reimbursement to the Village or Pulte, as applicable, based upon whether the Village or Pulte paid the initial cost, prior to application of amounts in the TIF Fund to payment of such costs.

Pulte acknowledges and agrees that the foregoing priority of payments from the TIF Fund shall supersede any existing provisions regarding such priority contained in the Ancillary Agreement or in the Development Agreement.

7. **Revenue Bonds.** Revenue bonds may be issued by the Development Finance Authority of Summit County, or such other governmental issuer as may be acceptable to the Village (herein referred to as the "Issuer"), payment of which is secured solely by the revenues deposited into the TIF Fund. Any such revenue bonds shall be without recourse to the Village. The Village agrees to cooperate with Pulte in connection with the issuance of any such revenue bonds, including entering into a cooperative agreement on terms and conditions reasonably acceptable to the Village with the Issuer pursuant to which amounts deposited into the TIF Fund, less the Village Processing Fee, are pledged for the payment of such revenue bonds. All costs and expenses incurred by the Village in connection with the issuance of such revenue bonds shall be paid from proceeds of such revenue bonds. Proceeds of such revenue bonds, less costs of issuance and any required reserves, shall be disbursed to reimburse costs of the Village and costs incurred by Pulte in order of priority set forth in Section 6 above, with reimbursement to Pulte not to exceed the amount of such Reimbursable Costs remaining unpaid, and any excess proceeds payable to the Village, to be used by the Village for payment of other costs and expenses in accordance with the TIF Act and TIF Ordinance.

8. **Excess Funds.** Any amounts deposited into the TIF Fund which exceed the amounts required for payment of Reimbursable Costs, and, if revenue bonds are issued, payment of debt service, administrative expenses and replenishment of required reserves for such revenue bonds shall be retained by the Village and used in accordance with the TIF Act and the TIF Ordinance, provided that in the event revenue bonds are issued and the proceeds of such revenue bonds are not sufficient to reimburse Pulte for all Reimbursable Costs, then any such excess shall first be used to reimburse Pulte or the Village for all remaining Reimbursable Costs in accordance with the priority set forth in Section 6.

9. **Special Assessments.** The Parties acknowledge that the Ancillary Agreement and the Development Agreement contemplated the imposition of certain special assessments to pay the costs of certain of the sewer improvements in the event that the TIF Fund was not in amount to

allow for the payment of all sewer improvements. The Parties agree that the provisions regarding New Sanitary Sewer Assessments are applicable only (i) to the extent that the amounts anticipated to be collected in, and subsequently actually collected in, the TIF Fund or, if issued, the proceeds of revenue bonds issued pursuant to Section 7 above, are not sufficient to pay for such sewer improvements (but specifically excluding the costs of the Donated Line Maintenance), and (ii) as may be required or deemed necessary by the Village to enable the Village to pay the costs of the Briarwood Sanitary Sewer Extension. The Village retains the right to impose special assessments for the costs of the Donated Line Maintenance on those lots which are serviced by such sewer (not including parcels which are part of the New Briarwood Subdivision.)

**10. Limitation of Liability.** Pulte acknowledges that there is no guarantee that the monies in the TIF Fund will be sufficient to fully reimburse Pulte for costs of the Pulte Infrastructure Improvements. The obligations of the Village hereunder regarding reimbursement of such costs is not a general obligation or debt of the Village, and the taxing power of the Village is not in any manner pledged to or available for any such reimbursement. Any revenue bonds issued shall recite that they are not an obligation or debt of the Village. Pulte assumes and accepts the risk that there will be insufficient funds to fully reimburse Pulte. No covenant, stipulation, obligation or agreement of the Village contained in this Agreement, the Ancillary Agreement or the Development Agreement, or in any revenue bonds or any document executed in connection with any revenue bonds, shall be deemed to be a covenant, stipulation, obligation or agreement of any present or future member, officer, agent or employee of the Village in other than that person's official capacity. Neither the members of the Village Council nor any official executing this Agreement or any other agreement in connection herewith or contemplation hereof shall be liable personally for any provisions thereof or be subject to any personal liability or accountability by reason of the execution hereof or thereof. Any liability of the Village hereunder shall be enforceable solely against the Village's interests in the TIF Fund and not against any other asset of the Authority.

**11. Indemnification.** Pulte hereby indemnifies, agrees to defend and holds harmless the Village and all of its public officials, employees, representatives and agents from all demands, damages, claims, suits, actions, investigations, proceedings, costs and expenses, including without limitation all reasonable attorneys' fees and costs, which may be incurred by or asserted against them in connection with the construction of, and payment of the costs of, the Pulte Infrastructure Improvements.

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

**13. Ratification.** The parties acknowledge that the terms set forth herein shall modify the Development Agreement, the Ancillary Agreement and the MOU. Except as expressly modified and amended hereby, none of the Development Agreement, the Ancillary Agreement and the MOU has been modified or amended, each of which 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 each of which is hereby declared by Village and Pulte to be in full force and effect. In the event of a discrepancy between this Agreement and any of the Development Agreement, the Ancillary Agreement and the MOU, the provisions of this Agreement shall control.

**14. 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.]

DRAFT

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

**PULTE HOMES OF OHIO LLC**

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

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

**VILLAGE OF RICHFIELD, OHIO**

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

Its: Mayor

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

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

Its: Finance Director

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

APPROVED AS TO LEGAL FORM:

\_\_\_\_\_  
Alejandro V. Cortes, Director of Law  
Village of Richfield