

**REIMBURSEMENT AGREEMENT FOR THE CONSTRUCTION OF ROAD
IMPROVEMENTS ON BASS LAKE ROAD (STATION 22+42.84 TO STATION 83+70)
BETWEEN THE COUNTY AND THE DEVELOPER**

THIS REIMBURSEMENT AGREEMENT, (hereinafter referred to as "Agreement"), made and entered into by and between the **COUNTY OF EL DORADO**, a political subdivision of the State of California, (hereinafter referred to as "County"), and **PULTE HOME CORPORATION**, a Michigan corporation duly qualified to conduct business in the State of California, whose principal place of business is 100 Bloomfield Hills Parkway #300, Bloomfield Hills, Michigan 48304 and whose local office address is 1544 Eureka Road Suite 150, Roseville, CA 95661 (hereinafter referred to as "Developer"), concerning the construction of **ROAD IMPROVEMENTS ON BASS LAKE ROAD (STATION 22+42.84 TO STATION 83+70)**, (hereinafter referred to as "Project");

RECITALS

WHEREAS, provision number 1 of the "*AGREEMENT TO MAKE SUBDIVISION IMPROVEMENTS FOR CLASS I SUBDIVISIONS BETWEEN COUNTY AND OWNER*" related to Hollow Oak, Unit 1, TM94-1290 (hereinafter referred to as "SIA"), required Developer to construct the Project;

WHEREAS, provision number 28 of the SIA defines the Project as reimbursable from the Road Impact Fee (RIF) and/or the Traffic Impact Mitigation (TIM) fee programs consistent with the structure of the County's road impact fee program in effect at the time the agreement was executed. Changes in the structure of the fee program resulted in the Local Road Component of Fee Zone Number 8 of the 2004 General Plan TIM Fee Program being the funding source for the reimbursement;

WHEREAS, Developer entered into "*ROAD IMPROVEMENT AGREEMENT FOR BASS LAKE (Sta 22+42.84 to Sta 83+70) IMPROVEMENT PROJECT BETWEEN THE COUNTY AND THE DEVELOPER, AGMT # 04-589*" on March 15, 2005, where the Project and the obligations of the Developer are more fully described;

WHEREAS, Developer contracted for work described on plans titled "*IMPROVEMENT PLANS FOR BASS LAKE ROAD STATION 22+42.84 TO STATION 83+70*" prepared by PSOMAS, Inc., civil engineers, that were approved by the County Engineer in accordance with the Developer's obligations;

WHEREAS, a Notice of Completion for the Project was executed by Pulte Home Corporation on August 15, 2006;

WHEREAS, on July 1, 2008, the El Dorado County Board of Supervisors accepted the improvements as complete and included the facilities into the County's maintained mileage system;

WHEREAS, provision 28 of the SIA states that reimbursement for Project shall be at a rate of 20% per year in years eleven to fifteen after completion of improvements with no interest being applied;

WHEREAS, the County has completed the acquisition process related to the construction of Project and has determined that \$3,692,152.03 of Project costs are eligible for reimbursement under the terms described in Condition 28 of the SIA from the Local Road Component of Fee Zone Number 8 of the 2004 General Plan TIM Fee Program;

WHEREAS, Project is currently included in the Local Road Component of Fee Zone Number 8 of the 2004 General Plan TIM Fee Program as a reimbursement;

WHEREAS, County has adopted "*Guidelines for Road Impact Fee/Traffic Impact Mitigation Fee Reimbursement Projects*" (hereinafter referred to as "Guidelines") that identify requirements for pre-construction procedures, bid/proposal procedures, project award, construction, reimbursement and cost reimbursement policies; a copy of which is on file and available at the El Dorado County Community Development Agency Transportation Division's main office located at 2850 Fairlane Court, Placerville, California 95667, and is incorporated herein and made by reference a part hereof as if set forth in full;

NOW, THEREFORE, it is the intent of the parties hereto that the performance of this Agreement shall be in conformity with all applicable state and local laws, rules and regulations and the parties hereto in consideration of the recitals, terms, and conditions herein, do hereby agree as follows:

ARTICLE I: ELIGIBILITY CRITERIA

Developer acknowledges and agrees that to be eligible for reimbursements under County's Guidelines (hereinafter referred to as "Eligible Costs"), the design and construction of the improvements must be done in accordance with the specifications, change orders and itemized cost estimates approved by County, all construction work shall be in accordance with all applicable state and local rules, regulations and ordinances, including but not limited to the applicable provisions of the California Public Contract Code, the California Labor Code prevailing wage requirements, County competitive bidding requirements, state licensing regulations and County policies, and all right-of-way activities, inclusive of negotiation and acquisition, shall conform to all federal and state laws, regulations and policies, including but not limited to the Uniform Relocation Assistance and Real Property Acquisition Policies Act.

ARTICLE II: TERMS OF REIMBURSEMENT

- A. County agrees to reimburse Developer for costs incurred related to Project pursuant to Guidelines, excluding section 7.0 (suspended by the Board of Supervisors on May 20, 2003) as pertains to the Local Road Component of Fee Zone Number 8 of the 2004 General Plan TIM Fee Program (formerly entitled the "El Dorado Hills/Salmon Falls Road Impact Fee Program") only (hereinafter referred to as the "Eligible Reimbursement Costs").

- B. Eligible Reimbursement Costs shall be reimbursed only from the Local Road Component of Fee Zone Number 8 of the 2004 General Plan TIM Fee Program or its successor, excluding the 30% portion reserved for the Silva Valley Interchange set-aside, (hereinafter referred to as "EDH TIM") where cash payments shall be made on a five-year basis without interest, except as provided in this section. Payments each year shall be 20% of the Eligible Reimbursement Costs. The annual payment date shall be determined by the date that the Notice of Completion was executed by Pulte Home Corporation (August 15, 2006). The initial reimbursement payment shall be made on or before the eleventh anniversary of this date (August 15, 2017). The subsequent four annual reimbursement payments shall be made on or before the anniversary date of each following year until paid in full. The ability of County to fully reimburse Eligible Reimbursement Costs is dependent upon the amount of funds available in the EDH TIM account, or its successor, after sufficient funds for prior set-asides and priority reimbursement commitments documented in agreements approved by the County Board of Supervisors are reserved (hereinafter referred to as "Uncommitted EDH TIM").
- C. Developer acknowledges and agrees that the sole source of funds that Developer shall look to for the reimbursement shall be the Uncommitted EDH TIM and that the County shall not be obligated to fund the reimbursement from any other funds or revenues, including but not limited to, the County General Fund. If in any given year there are insufficient funds in the Uncommitted EDH TIM to make payment, any unpaid residual shall bear interest at the Treasurer's pooled rate of funds, computed annually from the due date of the next regularly scheduled payment to a maximum of ten (10) years. In the event that there are insufficient funds in the Uncommitted EDH TIM to provide the scheduled reimbursement in any year, Developer may elect to utilize the amount of the insufficiency as credits against fees in the EDH TIM, or its successor, exclusive of the 30% Silva Valley Interchange set-aside, said election to identify the parcel(s) to which it applies. Developer shall make election to utilize insufficiency for credits within 60 days of being notified by County that the annual payment will be reduced to an amount less than the amount scheduled. The credits shall be applied by County at time of Developer's application for building permit(s) against the mitigation fees in existence at the time of building permit application. Any insufficiency not applied to use as credits shall continue to earn interest until paid as provided for in this Agreement. Nothing contained in this Agreement shall preclude the County, in County's sole discretion, from including this same credit provision related to insufficient payment amounts in subsequent agreements entered into with third parties for reimbursement for developer advanced projects within the EDH TIM area, or its successor area, on an equal pro-rata basis.
- D. Notwithstanding any provision in this Agreement to the contrary, County shall not be precluded from modifying its 2004 General Plan TIM Fee Program by

removing or adding fee categories, including, but not limited to, Age-Restricted Single-Family and Multi-Family categories, and/or to increase or decrease the amount of the EDH TIM fee as deemed necessary by the County to reflect, for example, a decrease in the need for and/or cost of construction of traffic and traffic related improvements. The foregoing shall not be construed as obligating the County to modify, decrease, or adjust the amounts of its fee programs. In the event that the cash reimbursements generated from the EDH TIM fund, or its successor, are insufficient to fully fund the reimbursement as a result of the aforesaid modifications, inclusive of cash insufficiencies resulting from developers taking credits against fees in the EDH TIM area, or its successor area, in lieu of repayment triggered by cash insufficiency caused by said modifications, such insufficiencies shall not be deemed an event of default by the County hereunder and shall not entitle Developer to accelerate any payment or payments or to pursue any other remedies under this Agreement or as allowed by law.

ARTICLE III: INDEMNIFICATION

To the fullest extent allowed by law, Developer shall defend, indemnify and hold County harmless against and from any and all claims, suits, losses, damages, and liability for damages of every name, kind, and description, including attorneys' fees and costs incurred, brought for, or on account of, injuries to or death of any person including but not limited to workers, County employees, and the public, or damage to property, or any economic or consequential losses, which are claimed to or in any way arise out of or are connected with Developer or Developer's contractors, subcontractors, consultants, agents, or representative's design, work, operation and/or construction of the improvements, or performance of this Agreement, regardless of the existence or degree of fault or negligence on the part of the County, Developer, any Contractor(s), Subcontractor(s), and employee(s) of any of these, except for the sole or active negligence of County, its officers and employees, or as expressly provided by statute. This duty of Developer to indemnify and hold County harmless includes the duties to defend set forth in California Civil Code Section 2778.

ARTICLE IV: ASSIGNMENT AND ASSUMPTION OF PLANS AND SPECIFICATIONS

Contemporaneously with this Agreement, Developer will execute the attached Assignment and Assumption of Plans and Specifications and assign to County all of Developer's right, title and interest in, to and under the Plans and Specifications signed and stamped by Alan W. Rozier, a licensed register professional engineer employed by PSOMAS, Inc. entitled "*IMPROVEMENT PLANS FOR BASS LAKE ROAD STATION 22+42.84 TO STATION 83+70*", and will obtain PSOMAS, Inc.'s consent to this assignment. Upon approval of this Agreement by County, County will accept this assignment of ownership of the assigned Plans and Specifications. Nothing by way of this agreement of this assignment will obligate County to provide payment or compensation to PSOMAS, Inc.

ARTICLE V: VENUE

This Agreement has been executed in California, and shall be governed by and construed in accordance with the laws of the State of California.

ARTICLE VI: WAIVER

Waiver by one party of the performance of any covenant, condition, or promise shall not invalidate this Agreement, nor shall it be considered to be a waiver by such party of such matters in the future or any other covenant, condition, or promise hereunder. Any waiver, to be effective, shall be expressed and in writing and shall be delivered to the other party.

ARTICLE VII: CONSTRUCTION

This Agreement shall be construed as a whole, the captions being for the convenience of the parties only and not intended to describe or define the provisions in the portions of the Agreement to which they pertain. Each party hereto acknowledges and agrees that each has had independent counsel and review and participated in the drafting of this Agreement, and each hereby fully waives the application of any law, statute or rule of construction or interpretation to the effect that any ambiguities are to be resolved against the drafting party.

ARTICLE VIII: CHANGES TO AGREEMENT

This Agreement may be amended by mutual consent of the parties hereto. Said amendments shall become effective only when in writing and fully executed by duly authorized officers of the parties hereto.

ARTICLE IX: NOTICE TO PARTIES

All notices to be given by the parties hereto shall be in writing and served by depositing same in the United States Post Office, postage prepaid and return receipt requested. Notices to County shall be in duplicate and addressed as follows:

To County:
County Of El Dorado
Community Development Agency
Administration and Finance Division
2850 Fairlane Court
Placerville, CA 95667

With a Copy to:
County Of El Dorado
Community Development Agency
Administration and Finance Division
2850 Fairlane Court
Placerville, CA 95667

Attn.: Ruth Young,
Chief Fiscal Officer

Attn.: Michelle Weimer,
Administrative Services Officer
Contract Services

or to such other location as County directs.

Notices to Pulte Home Corporation shall be addressed as follows:
Pulte Home Corporation
1544 Eureka Road, Suite 150
Roseville, CA 95661

Attn: Greg Van Dam, Vice President of Land

or to such other location as Developer directs.

ARTICLE X: CONTRACT ADMINISTRATOR

The County officer or employee with responsibility for administering this Agreement is Ruth Young, Chief Fiscal Officer - Community Development Agency Administration and Finance Division, or successor.

ARTICLE XI: SUCCESSORS AND ASSIGNS

This Agreement is binding upon the heirs, assigns, and successors-in-interest of the parties hereto. The Developer may not assign its rights or obligations hereunder, except to successors-in-interest to the property within the Approved Tentative Map without the prior written consent of the County.

ARTICLE XII: AUTHORIZED SIGNATURES

The parties to this Agreement represent that the undersigned individuals executing this Agreement on their respective behalf are fully authorized to do so by law or other appropriate instrument and to bind upon said parties to the obligations set forth herein.

ARTICLE XIII: SEVERABILITY

If any term of this Agreement, or the application thereof to any person or circumstance, shall to any extent be invalid or unenforceable, the remainder of this Agreement, or the application of such term to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

Contract Administrator Concurrence:

By: Ruth Young Dated: 1-22-16
Ruth Young
Chief Fiscal Officer,
Community Development Agency, Administration and Finance Division

Requesting Division Concurrence:

By: 

Kate Sampson
Assistant Director of Administration & Finance
Community Development Agency, Administration and Finance Division

Dated: 1/22/16

Requesting Department Concurrence:

By: 

Steven M. Pedretti
Director
Community Development Agency

Dated: 1/22/16

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates indicated below, the latest of which shall be deemed to be the effective date of this Agreement.

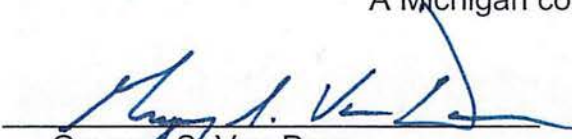
COUNTY OF EL DORADO

By:  Dated: 2/23/16
Ron Mikulaco
Board of Supervisors

Attest:
James S. Mitrissin
Clerk of the Board of Supervisors

By:  Dated: 2/23/16
Deputy Clerk

PULTE HOME CORPORATION
A Michigan corporation

By:  Dated: 1/15/16
Gregory S. Van Dam
Vice President of Land Planning
& Development

PULTE HOME CORPORATION

ACKNOWLEDGMENT

State of California
County of Placer

On Jan. 15, 2016 before me, Carol Peterson, Notary Public
(here insert name and title of the officer)

personally appeared
Gregory S. Van Dam

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Carol Peterson



(Seal)