5979323



FILED FOR RECORD BY:

MARY ELLEN VANDERVENTER

LAKE COUNTY, IL RECORDER

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# FOR MISCELLANEOUS, NON-STANDARD OR RE-RECORDED DOCUMENT

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#### FIRST AMENDMENT TO DEVELOPMENT AGREEMENT

This First Amendment to Development Agreement (this "Amendment") is made and entered into as of March 21, 2006 by and among THE CITY OF ZION, an Illinois municipal corporation (the "City") and PULTE HOME CORPORATION, a Michigan corporation ("Pulte" or "Developer").

# RECITALS:

- A. The City and Thunderhawk Properties, L.L.C ("Thunderhawk") entered into that certain Thunderhawk Estates P.U.D. Development Agreement dated as of December 6, 2005 (the "Original Agreement" and together with this Amendment, the "Agreement") with respect to the development of a parcel of land consisting of approximately 59.6 acres, more or less, located east of Kenosha Road and north of 29<sup>th</sup> Street, which property is legally described in Exhibit A attached hereto (the "Original Property"). On December 14, 2005, Pulte acquired a portion of the Original Property from Thunderhawk, which consists of approximately 43.838 acres, more or less, and is legally described in Exhibit B attached hereto (the "Phase 1 Parcel"). The remainder of the Original Parcel (the "Phase 2 Parcel"), which is legally described on Exhibit C attached hereto, is still owned by Thunderhawk and under contract to be sold to Pulte upon the satisfaction of certain conditions.
- B. Pulte is also the contract purchaser of a parcel of land consisting of approximately 36 acres, more or less, located east of Kenosha Road and immediately north of and adjacent to the Original Property, which property is legally described in Exhibit D attached hereto (the "Phase 3 Parcel" and together with the Phase 1 Parcel and the Phase 2 Parcel, the "Property"). The record owner of the Phase 3 Parcel is Leonard D. Khayat.
- C. Pulte intends to develop the Property as a single development named "Cypress Park". The Phase 1 Parcel and the Phase 2 Parcel are currently subject to that certain final plat of subdivision for Cypress Park Subdivision Phase 1 approved by the City on December 6, 2005 and recorded on February 9, 2006 with the Lake County Recorder of Deeds as Document No. 5944150 (the "Phase 1 Plat"). The Phase 1 Plat subdivides the Phase 1 Parcel into 89 single family residential building lots, 6 common area outlots and an outlot to be conveyed to the Zion Park District. The Phase 2 Parcel is platted on the Phase 1 Plat as a single outlot, and it is Pulte's intention to subdivide this outlot as thirty-two (32) residential building lots and three (3) common area outlots.
- D. The City approved the Original Agreement pursuant to Ordinance No. 05-0-47 adopted by the City Council on December 6, 2005. Pulte and the City wish to amend the Original Agreement so that, among other things, its terms and conditions, as amended herein, apply to the Phase 3 Parcel. The Phase 3 Parcel will be developed as part of Cypress Park and will contain eighty-two (82) residential building lots, five (5) common area outlots and an outlot to be dedicated to the Zion Park District.

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- E. Pulte has submitted to the City the Preliminary Plat for Cypress Park Phase 3 prepared by Ien Land Design, Inc. dated November 29, 2005 attached hereto as Exhibit E, and a Landscape Plan for the Phase 3 Parcel prepared by Gary R. Weber Associates, Inc. dated November 29, 2005 attached hereto as Exhibit F (collectively, the "Phase 3 Preliminary Plans"). The City Planning and Zoning Commission conducted a public hearing thereon on January 6, 2006 pursuant to due and proper notice and has recommended that the Phase 3 Preliminary Plans be approved as the Preliminary Plat of Subdivision for Phase 3 of Cypress Park. Pulte has also submitted to the City the Preliminary Engineering Plan for the Phase 3 Parcel prepared by Pearson Brown & Associates Inc. dated November 4, 2005 attached hereto as Exhibit G.
- F. The parties intend that the Original Agreement be amended in order to govern and control the development of Cypress Park on the Property in the manner provided herein and in the Original Agreement.

NOW, THEREFORE, for and in consideration of the Recitals set forth above, which are fully incorporated herein, and the mutual covenants and agreements of the parties, the parties agree as follows:

- 1. Pulte as Developer. The City hereby acknowledges and agrees that Pulte shall be deemed to be the Developer of the Property under the Agreement with respect to the Phase 1 Parcel and the Phase 3 Parcel and shall be subject to the obligations, and shall be entitled to the rights, of the Development under the Agreement with respect to such Parcels. As of the Effective Date of this Amendment, Thunderhawk shall no longer be deemed to be the Developer of the Phase 1 Parcel and shall no longer be entitled to the rights of the Developer under the Agreement with respect to the Phase 1 Parcel, and Thunderhawk is hereby released from any and all obligations of the Developer under the Agreement with respect to the Phase 1 Parcel. Thunderhawk shall remain the Developer of the Phase 2 Parcel until such time that written notice of the transfer of the Phase 2 Parcel is delivered to the City, in which event, Thunderhawk shall no longer be deemed to be the Developer of the Phase 2 Parcel and will be released from any and all obligations of the Developer under the Agreement with respect to the Phase 2 Parcel. Following written notice from Pulte that it has acquired the Phase 2 Parcel, the City shall recognize Pulte as the Developer under the Agreement for the Phase 2 Parcel.
- 2. <u>Inclusion of Phase 3 Parcel in Property</u>. The Phase 3 Parcel is hereby deemed to be included in the definition of the "Property" under the Original Agreement. All of the terms and conditions of the Original Agreement shall apply to the Phase 3 Parcel, except to the extent modified by this Amendment.
- 3. Zoning. At the same hearing on which the City Council adopts an ordinance approving this Amendment and directing the Mayor and City Clerk to execute same, the City Council shall also adopt an ordinance zoning the Phase 3 Parcel under the R16 residential zoning classification with a Planned Unit Development. The Property, including the Phase 3 Parcel, shall constitute one Planned Unit Development and shall be developed as a single residential subdivision.

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- 4. Approval of the Phase 3 Preliminary Plans. The City has reviewed and accepted the recommendation of the Planning and Zoning Commission and, accordingly, hereby approves the Phase 3 Preliminary Plan, and the Developer agrees to develop the Phase 3 Parcel in accordance with the Preliminary Plat of Subdivision for Phase 3 of Cypress Park attached hereto as Exhibit E, the Landscape Plan attached hereto as Exhibit F and the Preliminary Engineering Plans attached hereto as Exhibit G. It is hereby agreed that the Phase 3 Preliminary Plan shall serve as the Preliminary Plan and the Preliminary Plat of Subdivision for the Phase 3 Parcel called for under the City's Zoning Ordinance.
- 5. Approval of Emergency Access Agreement. As a condition for approving the final plat of subdivision for the Phase 2 Parcel, the City is requiring that the Developer enter into a written agreement with the Village of Beach Park that grants permission to Developer to construct an emergency access route with access to 29<sup>th</sup> Street over a portion of the Phase 2 Parcel. Such an agreement is required because the right-of-way for 29<sup>th</sup> Street, which is located in Beach Park, is adjacent to the southern boundary of a portion of the Phase 2 Parcel. Accordingly, the City Council hereby approves and authorizes and directs the Mayor and City Clerk to execute and to deliver to Developer the Emergency Access Agreement substantially in the form attached hereto as Exhibit H. Developer shall endeavor to obtain formal approval and execution of the Emergency Access Agreement from the Village of Beach Park and, upon completion thereof, will deliver a fully executed copy of the Emergency Access Agreement to the City.
- 6. <u>Variances</u>. Any variances or waivers from the City's ordinances that are granted under the Original Agreement shall be applicable to the Phase 3 Parcel, in addition to any variances or waivers shown on the Phase 3 Preliminary Plans. All such variances or waivers have been recommended by the City's Planning and Zoning Commission and are hereby approved by the City Council and shall apply to the development of the Phase 3 Parcel.
- 7. Impact and Development Fees. Fees (as defined in the Original Agreement) payable by the Developer with respect to the Phase 1 Parcel and the Phase 2 Parcel shall continue to be governed by the terms and conditions of the Original Agreement. Fees that are payable by the Developer with respect to the Phase 3 Parcel are set forth in the schedule attached hereto as Exhibit I. The City agrees that Fees for the Phase 3 Parcel shall not be increased from the schedule attached hereto as Exhibit I, nor shall the Phase 3 Parcel be subject to any new fees enacted after the date of this Amendment.
- 8. <u>Homeowners Association</u>. The City hereby agrees that the Developer may amend the Declaration of Covenants, Conditions and Restrictions for Cypress Park to include the Phase 3 Parcel and, following final plat approval thereof, the Phase 2 Parcel and to make the entire Property subject to all of the terms and conditions of the Declaration.
- 9. Special Service Area. Under Section 18.E of the Original Agreement, the City retained the right to create a so-called "dormant" special service area ("SSA") for the Property to reimburse the City for any costs it may incur due to the failure of the Cypress Park homeowner's association to properly maintain stormwater detention areas and subdivision entrance features. The City agrees that, if and when enacted by the City, any such dormant SSA shall include the entire Property, including the Phase 3 Parcel.

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- 10. <u>Temporary Signs</u>. Section 18.M of the Original Agreement is hereby amended to permit Developer to install on the Phase 3 Parcel one (1) additional subdivision sign not exceeding 96 square feet of sign face.
- 11. <u>Sanitary Sewer</u>. The City acknowledges that there are several building lots located within the Property where the sanitary sewer service lines are located at too shallow an elevation in order to function by gravity alone. For such lots, Developer shall be permitted to install ejector pits where required due to engineering constraints.
- 12. <u>Notices</u>. Section 14 of the Original Agreement is hereby amended to provide that notice to the Developer shall be directed as follows:

Pulte Home Corporation 2250 Point Boulevard Suite 401 Elgin, IL 60123 Attention: Brian Brunhofer

With a copy to:

Gardner Carton & Douglas LLP 191 North Wacker Drive Suite 3700 Chicago, Illinois 60606 Attention: William L. Goldbeck

13. <u>Exhibits</u>. All exhibits to this Amendment are incorporated herein by this reference thereto. The following is a list of the exhibits incorporated into this Agreement:

Exhibit A	Legal Description of the Original Property
Exhibit B	Legal Description of the Phase 1 Parcel
Exhibit C	Legal Description of the Phase 2 Parcel
Exhibit D	Legal Description of the Phase 3 Parcel
Exhibit E	Preliminary Plat for the Phase 3 Parcel
Exhibit F	Landscape Plan for the Phase 3 Parcel
Exhibit G	Preliminary Engineering Plans for the Phase 3 Parcel
Exhibit H	Emergency Access Easement
Exhibit I	Fee Schedule for the Phase 3 Parcel

14. Effect of Amendment. This Amendment shall become effective upon the date first written above. The provisions of the Original Agreement remain in full force and effect, modified only as expressly provided for in this Amendment. If a provision of this Amendment conflicts with a provision in the Original Agreement, the provision in this Amendment shall control. All capitalized terms not otherwise defined herein shall have the same meanings as are ascribed to such terms under the Original Agreement.

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- 15. <u>Effective Date of this Amendment</u>. The effective date of this Amendment (the "**Effective Date**") shall be the date upon which the last of the parties hereto executes this Amendment following the City's approval of same.
- 16. <u>Counterparts</u>. This Amendment may be executed in two or more counterparts, each of which shall be deemed an original, and all of which when taken together shall constitute one Agreement.

[Signature page follows]

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

CITY:

CITY OF ZION, ILLINOIS:

Name: Lane Harrison

Its: Mayor

Attest:

By: Judy Macke

Its: City Clerk

DEVELOPER:

PULTE HOME CORPORATION

- and -

Name: JOE SEKORILADO

Its: Attorneys-in-Fact

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#### EXHIBIT A

#### to First Amendment to Development Agreement

#### Legal Description of the Original Property

PARCEL 1: That part of the North Half of the South East Quarter of Section 19, Township 46 North, Range 12 East of the Third Principal Meridian, lying East of the East of Kenosha Road (except the North 737.5 feet, measured at right angles to the North line thereof), in Lake County, Illinois.

PARCEL 2: The North 462.5 feet of the South East Quarter of the South East Quarter of Section 19 and the East 157.5 feet of the North 462.5 of the South West Quarter of Section 19, in Township 46 North, Range 12 East of the Third Principal Meridian, in Lake County, Illinois.

PARCEL 3: The West Half of the West Half of the South West Quarter of the South West Quarter of Section 20 and the North 33 feet of the East Half of the South West Quarter of the South West Quarter of Section 20, Township 46 North, Range 12 East of the Third Principal Meridian, in Lake County, Illinois.

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04-19-400-014 04-19-300-005

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#### EXHIBIT B

#### to First Amendment to Development Agreement

#### Legal Description of the Phase 1 Parcel

BEING A SUBDIVISION OF THE NORTH HALF OF THE SOUTHEAST QUARTER OF SECTION 19, LYING EAST OF THE EAST LINE OF KENOSHA ROAD (EXCEPT THE NORTH 737.50 FEET, MEASURED AT RIGHT ANGLES TO THE NORTH LINE THEREOF) TOGETHER WITH THE NORTH 462.50 FEET OF THE SOUTHEAST QUARTER OF SECTION 19, AND THE EAST 157.50 FEET OF THE NORTH 462.50 FEET OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 19, TOGETHER WITH THE WEST HALF OF THE WEST HALF OF THE SOUTHWEST QUARTER OF SECTION 20 AND THE NORTH 33 FEET OF THE EAST HALF OF THE WEST HALF OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 20, ALL IN TOWNSHIP 46 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN LAKE COUNTY, ILLINOIS.

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# **EXHIBIT C**

# to First Amendment to Development Agreement

Legal Description of the Phase 2 Parcel

As of the date of the amendment approval, this phase has not been completed.

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#### EXHIBIT D

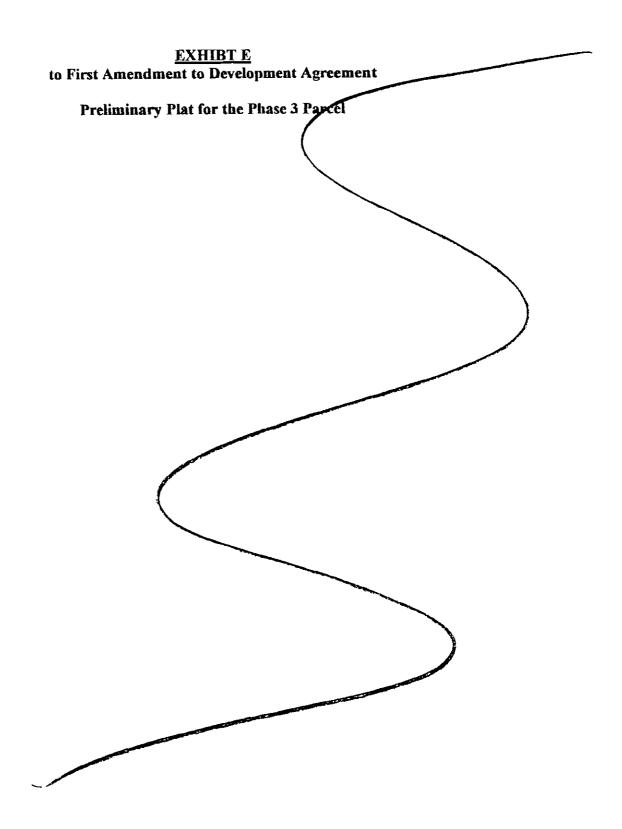
# to First Amendment to Development Agreement

### Legal Description of the Phase 3 Parcel

The north 737.5 feet (measured at right angles to the north line) of that part of the north half of the southeast quarter of section 19, township 46 north, range 12 east of the third principal meridian, lying east of the center line of Kenosha Road (except that part thereof described as: beginning at a point on the north line of the southeast quarter of section 19, aforesaid, which is 2,248.2 feet more or less, west of the east quarter corner of said section 19, said point lying on the center line of Kenosha Road; thence East on said north line 266.48 feet; thence south at right angles to said north line 507.02 feet; thence west parallel with said north line 420.85 feet to the center line of Kenosha Road; thence northeasterly along said center line of Kenosha Road; thence northeasterly along said center line of beginning) in Lake County, IL.

Containing 1,556,658 sq. ft. or 35.74 acres

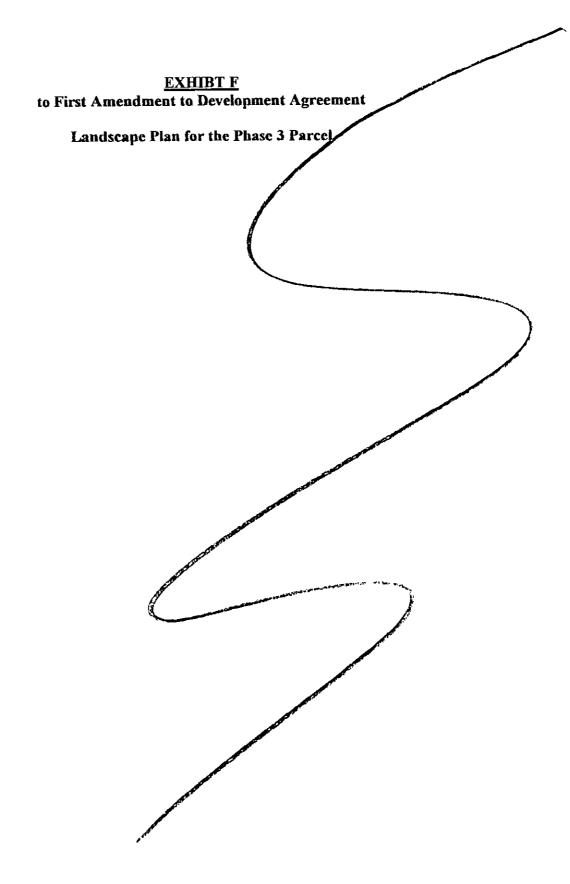
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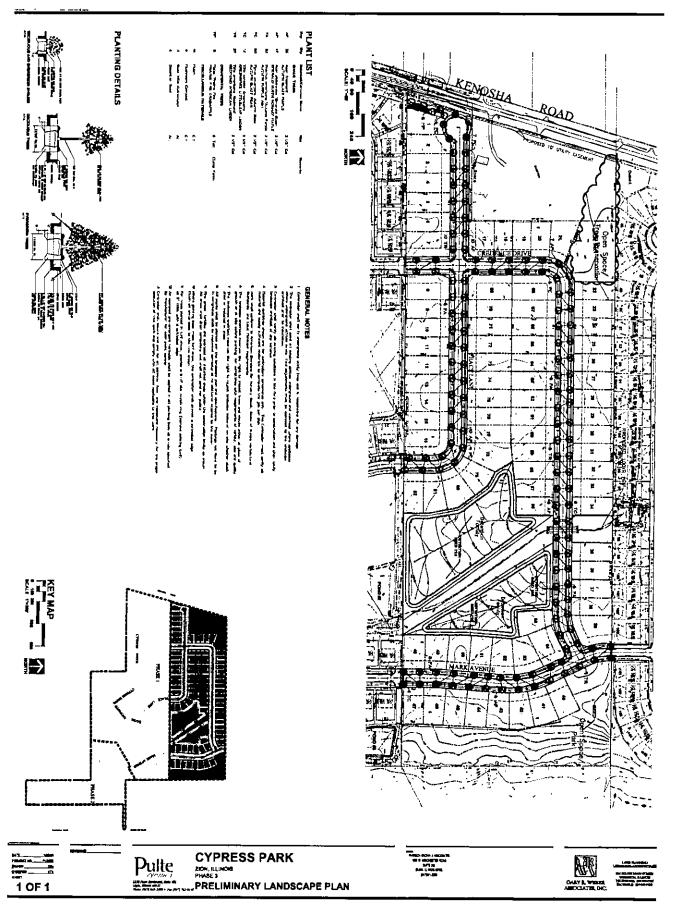


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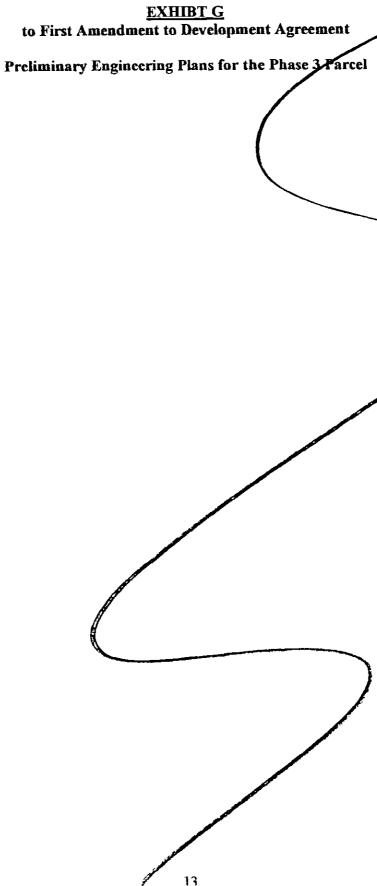
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# <u>EXHIBT H</u> to First Amendment to Development Agreement

# **Emergency Access Easement**

This document has not been signed by all interested parties as of this date:

March 21, 2006

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#### EMERGENCY ACCESS AGREEMENT

THIS EMERGENCY ACCESS AGREEMENT (this "Agreement") is made and entered into as of March \_\_\_\_\_\_, 2006 by and between THE CITY OF ZION, an Illinois municipal corporation ("Zion"), THE VILLAGE OF BEACH PARK, an Illinois municipal corporation ("Beach Park") and PULTE HOME CORPORATION, a Michigan corporation ("Pulte").

#### **RECITALS**

- A. Pulte is the contract purchaser of a parcel of real estate containing 59 acres of vacant land (the "**Property**") generally located east of Kenosha Road and approximately two miles south of Route 173, within the municipal boundaries of Zion in Lake County, Illinois. The right-of-way for 29<sup>th</sup> Street, which is located in Beach Park, is adjacent to the southern boundary of a portion of the Property.
- B. Zion is requiring, as a condition for executing the Final Plat of Subdivision for Phase I of Pulte's development on the Property, that Pulte enter into a written agreement with Beach Park which grants permission to Pulte to construct an emergency access route with access to 29<sup>th</sup> Street over a portion of the Property that will be included in Phase 2 of Pulte's development.
- C. Article VII, Section 10 of the Constitution of the State of Illinois and the Intergovernmental Cooperation Act, 5 ILCS 220/5 et seq., grants to all local governments, including municipalities, the authority to enter into intergovernmental agreements to share or transfer governmental powers and privileges.
- D. The parties are entering into this Agreement for the purpose of providing for approval of an emergency access route from 29<sup>th</sup> Street to and from the Property, subject to the terms and conditions set forth in this Agreement.

NOW THEREFORE, in consideration of the Recitals above, which are fully incorporated herein, and the mutual covenants and promises contained, and for other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

- 1. <u>Emergency Access Route</u>. Beach Park hereby authorizes and permits emergency-only access to 29th Street by way of a landscaped access route located on the Property in the location indicated on the Site Plan attached hereto as <u>Exhibit A</u> (the "Emergency Access Route"). The Emergency Access Route shall be solely for the purpose of providing access for emergency service vehicles to and from the Property from 29<sup>th</sup> Street, as further provided in this Agreement.
- 2. <u>Construction and Maintenance</u>. The Emergency Access Route shall be constructed by Pulte, at its cost, as part of Phase 2 of Pulte's proposed Cyprus Park development, in accordance with plans and specifications to be approved by Zion, which plans and specifications shall comply with the following: (i) the Emergency Access Route shall not exceed 18 feet in width and shall be paved with an alternative, decorative pavement to facilitate year-round emergency vehicle access; (ii) the area surrounding the Emergency Access Route

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shall be landscaped in accordance with the Landscape Plan for 29th Street Buffer, prepared by Gary R. Weber Associates, Inc., a copy of which was previously submitted to Beach Park and is attached hereto as Exhibit B; (iii) the Emergency Access Route shall be gated in accordance with a gating plan approved by Zion and Beach Park. Zion agrees that the gate will normally be locked and accessible only by way of a remote-controlled locking system operated by, and in the control of, Zion's emergency service personnel. Zion shall be responsible for the maintenance, repair and replacement of the gate and locking system, following installation thereof by Pulte and acceptance thereof by Zion. Pulte shall keep and maintain the landscaping and other improvements installed on the Emergency Access Route (but not the gate and locking system) in good repair and condition until such time as the Cypress Park Homeowners Association (the "Association") assumes responsibility for maintenance, repair and upkeep thereof, which will be provided for under the terms of the Cypress Park Declaration of Covenants, Conditions and Restrictions to be recorded against the Property. It is understood and agreed by the parties that, once the locked gate is installed and operational on the Emergency Access Route, neither Pulte nor the Association will have control over the operation of the locking system for the gate, it being the intention that the locking system shall be the responsibility of, and under the control of. Zion and its emergency service personnel.

- 3. Restrictions on Emergency Access Route. Zion and Pulte, for themselves and their respective successors and assigns, hereby agree that the Emergency Access Route shall be solely for the purpose of ingress and egress by emergency service vehicles, such as police, fire and rescue vehicles and ambulances, over, upon, across and through the Emergency Access Route in those situations in which Zion deems to be an emergency situation. The Emergency Access Route shall not be used for any other type of vehicular access, including without limitation vehicular access by the general public or any type of construction traffic, without the prior written consent of Beach Park.
- 4. Failure to Maintain. In the event that the Emergency Access Route is not maintained by either Zion, Pulte or the Association as provided in this Agreement, Beach Park has the right, but not the obligation, to enter onto the property and take whatever reasonable steps it deems prudent to ensure that the use of the Emergency Access Route is maintained in compliance with this Agreement, including but not limited to maintenance of the locked gate and landscaping and posting of signs prohibiting non-emergency ingress and egress. Any and all costs incurred by Beach Park to enforce the obligations of Pulte or the Association may be assessed against the property as a lien. In the event Beach Park files suit to enforce this Agreement, the entity responsible for the maintenance of such portion of the Emergency Access Route under this Agreement shall pay all attorneys fees and costs associated with the enforcement of the Agreement. Notwithstanding the foregoing, Beach Park shall not take any action to obstruct or impair access to the Emergency Access Route by emergency service personnel.
- 5. Agreement to Run with Land. The authorization for access to 29<sup>th</sup> Street for the Emergency Access Route granted by this Agreement, and all of the restrictions regarding the use thereof set forth in this Agreement, shall be binding against the Property and shall run with the Land in perpetuity. Pulte agrees to record a memorandum of this Agreement against the Property with the Lake County Recorder's Office, which shall be in form and substance acceptable to the parties.

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- Review of Documents. Pulte shall submit a copy of the Cypress Park Declaration of Covenants, Condition and Restrictions and the Final Plat for Phase 2 for Beach Park's approval prior to recording. Pulte shall pay all attorneys fees incurred by Beach Park, or consultants fees associated with the review of this Agreement, the Declaration of Covenants and the Final Plat.
- 7. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which, when taken together, shall constitute one Agreement.

{SIGNATURE PAGE TO FOLLOW}

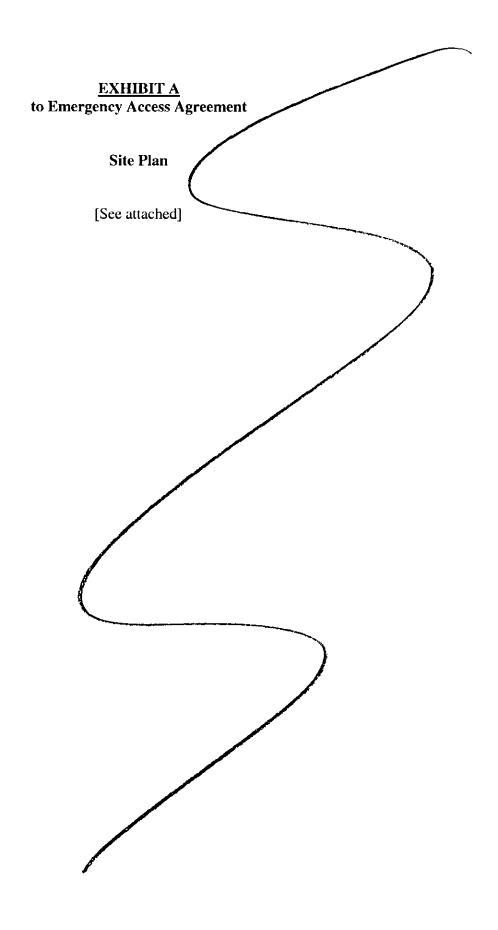
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IN WITNESS WHEREOF, this Emergency Access Agreement has been executed by the parties as of the date first stated above.

THE CITY OF ZION	THE VILLAGE OF BEACH PARK		
Ву:	By:		
Name:	Name:		
Title: Mayor	Title: Mayor		
ATTEST:	ATTEST:		
Ву:	By:		
Name:	Name:		
Title: Village Clerk	Title: Village Clerk		
PULTE HOME CORPORATION			
Ву:	_		
By:			
Its: Attorneys-in-Fact			

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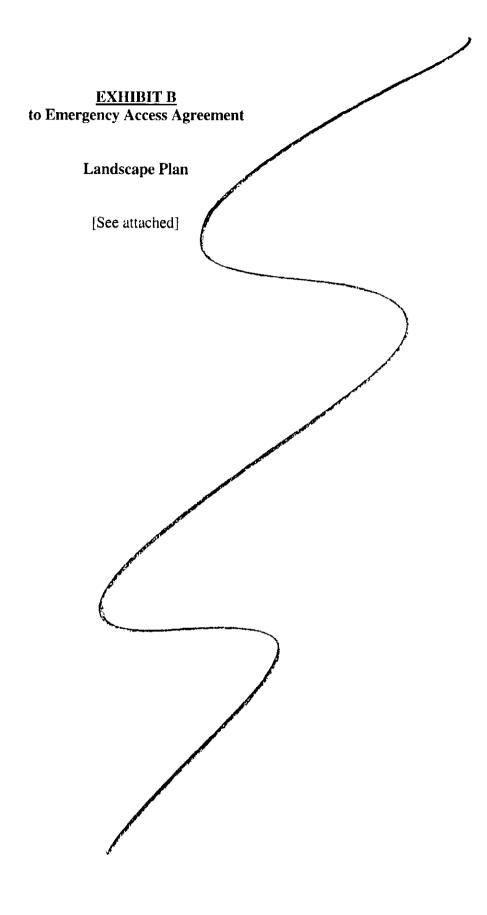
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# <u>EXHIBT I</u> to First Amendment to Development Agreement

# Fee Schedule for the Phase 3 Parcel

Impact Fee	Amount per Unit	
High School	\$4,646.00	
Beach Park K-8	\$5,000.00	
City of Zion	\$500.00	
Library	\$225.00	
Fire Department	\$500,00	

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# LAKE COUNTY, IL RECORDER 04/18/2006

# PLAT INFORMATION SHEET

NUMBER OF PL	2				
SECTION	TOWNSHIP	RANGE			
19	46	/2_			
LEGAL DESCRIPTION					
PT JE QE					

# CHECK (√) TYPE OF PLAT:

- ANNEXATION/DISCONNECTION
- CONDOMINIUM
- DEDICATION
- VACATION

OTHER		

SUBDIVISION (enter subdivision name on line below)

IF THE PLAT RECORDED WAS LARGER THAN 11" X 17", THE ATTACHED COPY HAS BEEN REDUCED FROM A SCANNED IMAGE.

ORIGINAL SCALE PAPER COPIES OR DIGITAL IMAGE FILES ARE ALSO AVAILABLE FOR PURCHASE – PLEASE CALL (847) 377-2678 FOR MORE INFORMATION

U:\Forms\Plat Information Coversheet for Scanning.doc Revised: April 21, 2005 8:00 AM

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