

AGREEMENT FOR IMPACT FEE CREDIT; OAKCREST

THIS AGREEMENT FOR IMPACT FEE CREDIT; OAKCREST ("Agreement") is made and entered into as of the 9th day of June, 2020 (the "Agreement Date"), by and among the Town of McCordsville, Hancock County, Indiana, an Indiana municipal corporation ("McCordsville"), and Pulte Homes of Indiana, LLC, an Indiana limited liability company ("Pulte"), as follows:

WHEREAS, McCordsville desires to foster the development and improvement of its parks and trail amenities through cooperative efforts with the development community;

WHEREAS, the development community desires to assist McCordsville in its effort to improve McCordsville's trail system;

WHEREAS, Pulte owns a certain residential development located at or about 8733 N CR 700W, McCordsville, Indiana 46055 and commonly known as Oakcrest ("Development");

WHEREAS, the Development includes a trail and an off-site trail extension of approximately 160 feet, depicted on Exhibit A attached hereto and incorporated herein;

WHEREAS, the trail extension is not a development requirement of the Town's Zoning Ordinance and will be made available to the public free-of-charge;

WHEREAS, McCordsville has adopted a Recreation Impact Fee Ordinance;

WHEREAS, Pulte and McCordsville desire to cause the construction of the trail extension on certain real property located within existing Town owned public right-of-way, as depicted on construction plans approved by McCordsville;

WHEREAS, Pulte and McCordsville anticipate that it will cost approximately five thousand one hundred and forty one dollars and (\$5,141) to construct the trail extension;

WHEREAS, Pulte is obligated to pay recreation impact fees to McCordsville in accordance with Ordinance No. 081418;

WHEREAS, McCordsville desires to issue Pulte a certain impact fee credit in consideration for Pulte constructing the trail extension;

WHEREAS, Pulte and McCordsville agree it is beneficial for McCordsville's residents to have the increased connectivity provided by the trail extension; and

WHEREAS, pursuant to Ordinance No. 081418, Section 5, a fee payer, such as Pulte is eligible to receive a credit against the Recreation Impact Fee under certain conditions for infrastructure improvements constructed or furnished in accordance with Indiana Code 36-7-4-1313, and 36-7-4-1355.

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties do hereby agree as follows:

ARTICLE I. RECITALS

The representations, covenants and recitations set forth in the foregoing recitals are material to this Agreement and are hereby incorporated into and made a part of this Agreement as though they were fully set forth in this Article I.

ARTICLE II. MUTUAL ASSISTANCE

The parties agree, subject to further proceedings required by law, to take such actions, including the execution and delivery of such documents, instruments, petitions and certifications, as may be necessary or appropriate, from time to time, to carry out the terms, provisions and intent of this Agreement and to aid and assist each other in carrying out said terms, provisions and intent.

ARTICLE III. TRAIL EXTENSION

3.01. Construction of Trail Extension. Pursuant to and consistent with the Construction Agreement and applicable law governing public bidding, Pulte shall cause the trail extension to be constructed by or before December 31, 2020, subject to *force majeure*. For the purposes of this Agreement, “**Force Majeure**” shall mean adverse weather conditions or conditions outside of Pulte’s control preventing Pulte from fulfilling any of its obligations as set forth in this Agreement. Pulte understand that time is of the essence regarding the completion of the trail extension and will use all due diligence to complete the same.

3.02. Cost of Trail Extension. McCordsville and Pulte acknowledge and agree that, consistent with the Construction Agreement, Pulte shall incur the cost to construct the trail extension in accordance with the specifications set forth in the approved construction plans for such trail extension. The trail extension shall be 10 feet wide and consist of asphalt 3 inches +/- inches on top of a rock base of 6 inches +/- in depth. Upon completion and acceptance by McCordsville, the trail extension will be dedicated to McCordsville and McCordsville will be responsible for the repair and maintenance of the trail extension after completion, acceptance and dedication.

ARTICLE IV. SUCCESSORS AND ASSIGNS

Pulte specifically acknowledges and agrees that its respective obligations pursuant to this Agreement shall inure to the benefit of and be binding upon and enforceable against its respective heirs, executors, administrators, successors and assigns. In any merger, acquisition or assignment of Pulte’s assets, this Agreement shall continue and shall be disclosed as a binding obligation and liability of Pulte and any successors in interest. Notwithstanding the foregoing, Pulte may assign its rights or a portion of its rights under this Agreement to any other affiliate of Pulte.

ARTICLE V. AUTHORITY

5.01. McCordsville's Authority. McCordsville represents and warrants that it has full constitutional and lawful right, power and authority, under currently applicable law, to execute and deliver and perform its obligations under this Agreement upon proper approval by the McCordsville

Town Council.

5.02. Pulte's Authority. Pulte represents and warrants to McCordsville that: (i) Pulte is an Indiana limited liability company duly existing and validly formed under the laws of the State of Indiana; (ii) Pulte shall not enter into any Agreements or undertakings that would limit, conflict with, or constitute a breach of this Agreement; (iii) Pulte has the authority to: (A) to enter into this Agreement; and (B) to perform its obligations hereunder, (iv) Pulte duly has been authorized by proper action: (A) to execute and deliver this Agreement; and (B) to perform its obligations hereunder; and (v) this Agreement is the legal, valid, and binding obligation of Pulte.

ARTICLE VI. GENERAL PROVISIONS

6.01. No Joint Venture or Partnership. Nothing contained in this Agreement shall be construed as creating either a joint venture or partnership relationship between McCordsville and Pulte or any affiliate thereof.

6.02. Time of Essence. Time is of the essence of this Agreement. The parties shall make every reasonable effort to expedite the subject matters hereof (subject to any time limitations described herein) and acknowledge that the successful performance of this Agreement requires their continued cooperation.

6.03. Breach. Before any failure of any party of this Agreement to perform its obligations under this Agreement shall be deemed to be a breach of this Agreement, the party claiming such failure shall notify, in writing, the party alleged to have failed to perform such obligation and shall demand performance. No breach of this Agreement may be found to have occurred if performance has commenced to the reasonable satisfaction of the complaining party within thirty (30) days of the receipt of such notice. If after said notice, the breaching party fails to cure the breach, the non-breaching party may seek any remedy available at law or equity.

6.04. Amendment. This Agreement may be amended only by the mutual consent of the parties, by the adoption of an ordinance or resolution of McCordsville approving said amendment, as provided by law, and by the execution of said amendment by the parties or their successors in interest.

6.05. No Other Agreement. Except as otherwise expressly provided herein, this Agreement supersedes all prior agreements, negotiations and discussions relative to the subject matter hereof and is a full integration of the agreement of the parties.

6.06. Severability. If any provision, covenant, agreement or portion of this Agreement or its application to any person, entity or property, is held invalid, such invalidity shall not affect the application or validity of any other provisions, covenants, agreements or portions of this Agreement and, to that end, any provisions, covenants, agreements or portions of this Agreement are declared to be severable.

6.07. Indiana Law and Venue. This Agreement shall be construed in accordance with the laws of the State of Indiana. All proceedings arising in connection with this Agreement shall be tried and litigated only in the state courts in Hancock County, Indiana, or the federal courts with venue that includes Hancock County, Indiana.

6.08. Notice. Any notice, statement, demand, or other communication required or permitted to be given, rendered or made shall be addressed as indicated below:

If to McCordsville:

Town of McCordsville
Attn: Tonya Galbraith, Town Manager
6280 W 800N
McCordsville, IN 46055

With a copy to:

Brand & Morelock
6 W. South Street
Greenfield, IN 46140
Attn: Gregg Morelock

If to Pulte:

Pulte Homes of Indiana, LLC
11590 N. Meridian Street, Suite 530
Carmel, Indiana 46032
Attn: David Compton
Phone: (317) 249-1128
Email: David.Compton@Pultegroup.com

With a copy to:

Pulte Homes of Indiana, LLC
11590 N. Meridian Street, Suite 530
Carmel, Indiana 46032
Attn: Rex Ramage
Phone: (317) 814-2026
Email: Rex.Ramage@Pultegroup.com

And a copy to:

PulteGroup, Inc.
Legal Department
1900 E. Golf Road, Suite 300
Schaumburg, Illinois 60173
Attn: Kristina M. Dalman
Phone: (847) 230-5411
Fax: (224) 265-4026
Email: Tina.Dalman@Pultegroup.com

6.09. Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same agreement.

6.10. Assignment. Except as otherwise provided for in this Agreement, the rights and obligations contained in this Agreement may not be assigned by Pulte or any affiliate thereof without the express prior written consent of McCordsville.

6.11. No Third Party Beneficiaries. This Agreement shall be deemed to be for the benefit solely of the parties hereto and shall not be deemed to be for the benefit of any third party.

6.12. Effective Date. Notwithstanding anything herein to the contrary, this Agreement shall not be effective until all parties hereto have executed this Agreement and McCordsville has approved or ratified this Agreement as required by law.

[Signature Page Follows]

Pulte Group, Inc.

Town of McCordsville, Hancock County, Indiana

By: _____

By: _____
Barry Wood, Town Council President

Printed Name: _____

Title: _____

Date: _____

Date: _____

