

R2015M1544

PROPORTIONATE SHARE AGREEMENT

This Proportionate Share Agreement (hereinafter "Agreement") is made and entered into this ____ day of OCT 22 2015, by and between Palm Beach County, a political subdivision of the State of Florida (hereinafter "County"), and Pulte Home Corporation, a Michigan corporation, and/or its successors or assigns (hereinafter "Developer").

WITNESSETH

WHEREAS, the Board of County Commissioners has implemented Proportionate Share as required by and in a manner consistent with section 163.3180(5)(h), Florida Statutes; and

WHEREAS, Proportionate Share allows developers to proceed with development notwithstanding a failure of transportation concurrency, by contributing their proportionate share to one or more regionally significant transportation facilities; and

WHEREAS, in order to conform to the requirements of this Program, the County and the Developer agree to the conditions, rights and obligations established in this Agreement; and

WHEREAS, to the extent that any of the conditions of this Agreement constitute monetary or property exactions that are subject to Nollan v. California Coastal Comm'n, 483 U. S. 825 (1987), and Dolan v. City of Tigard, 512 U. S. 374 (1994), the applicant/owner, and successors and assigns (a) agrees that there is a nexus and rough proportionality between such conditions and the impacts of this project/development, and that such conditions are necessary to ensure compliance with the criteria of the Palm Beach County Unified Land Development Code and Comprehensive Plan that are applicable to this approval, and (b) waives any claims based on such conditions.

NOW, THEREFORE, in consideration of the promises, mutual covenants, and conditions contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties to this Agreement agree as follows:

Section 1. Recitals

The above recitals are true and correct and form a part of this Agreement.

Section 2. Project Identification

The proposed Project is known as Gulfstream Polo and is located at the southeast quadrant of Lake Worth Road and Polo Road [Control No: 2005-00594 Application No: ZV/PDD-2015-00764].

Section 3. Proportionate Share Payment

The total amount of proportionate share payment for the required road improvement(s) shall be Two Million Three Hundred Eighty Seven Thousand, Four Hundred Eighty Four Dollars (\$2,387,484.00). This amount was calculated in accordance with the methodology provided for in section 163.3180(5)(h), Florida Statutes, and based on the Developer's Traffic Study (hereinafter "the Study"), prepared by Pinder Troutman Consulting, Inc., dated August 10, 2015, and approved by the Palm Beach County Traffic Division on September 16, 2015. Payment/contribution shall be submitted to Palm Beach County Traffic Division pursuant to the following schedule:

- No Building Permits for more than 248 single-family dwelling units and 240 townhome units (or development generating an equivalent number of external PM peak hour inbound trips) shall be issued until the Property Owner makes a proportionate share payment of \$1,454,149.00 (Original Payment Amount). The total proportionate share payment shall be adjusted at the time of payment by the escalator calculation set forth below. Any road impact fees paid by the Developer on this Project prior to this proportionate share payment will be applied as a credit toward the proportionate share payment. The proportionate share payment is sufficient to accomplish one or more mobility improvements that will benefit a regionally significant transportation facility in the area.
- No Building Permits for more than 272 single-family dwelling units and 270 townhome units (or development generating an equivalent number of external PM peak hour outbound trips) shall be issued until the Property Owner makes a proportionate share payment of \$933,335.00 (Original Payment Amount). The total proportionate share payment shall be adjusted at the time of payment by the escalator calculation set forth below. Any road impact fees paid by the Developer on this Project prior to this proportionate share payment will be applied as a credit toward the proportionate share payment. The proportionate share payment is sufficient to accomplish one or more mobility improvements that will benefit a regionally significant transportation facility in the area.

In recognition that construction prices may change over the life of the project, the above noted proportionate share payments shall be subject to the following escalator calculation:

Adjusted Payment = Original Payment Amount x (BONS payment month / BONS Month of Prop Share Execution)

- Original Payment Amount = Proportionate Share Payment amount specified
- BONS payment = Latest Published Value (including preliminary values) at Time of Payment
- BONS Month of Prop Share Execution = Published Value

The cost adjustment for the total and amount of each payment shall be based on the Bureau of Labor Statistics Producer Price Index (PPI) for Other Non-Residential Construction ((BONS) (Series ID: WPUIP23122301).

As of the effective date of this Agreement, the PPI index information may be accessed through the following link:

<http://data.bls.gov/timeseries/WPUIP2312301>

While the Proportionate Share payment(s) set forth in the Study are based on the proportionate costs of specific road improvements, the parties hereto understand and agree that Palm Beach County, in its sole discretion, may apply such payment(s) to one or more mobility improvements to regionally significant transportation facilities that will benefit the Project.

Section 4. Term of concurrency approval

In consideration for entering into this binding Proportionate Share Agreement with Palm Beach County, the Developer shall receive a certificate of concurrency approval; provided, however, if the Developer fails to apply for a development permit within twelve months of the date of this Agreement, then this Agreement and, the certificate of concurrency approval, shall be considered null and void, and the applicant shall be required to reapply to meet Palm Beach County Traffic Performance Standards.

Section 5. Increase in Project Trips

Any change to the Project could result in an increase in trips that impact one or more of Palm Beach County's Major Thoroughfares, as defined by Unified Land Development Code, Article 1.1.2.M.6. The Developer understands and agrees that it is precluded from asserting that those additional trips are vested or otherwise permitted under this Agreement. In addition, Developer understands and agrees that any such changes resulting in an increase in trips may cause this Agreement to be null and void, or may require the application for and execution of an additional Proportionate Share Agreement, along with any other traffic study or additional documentation.

Section 6. Road Impact Fee Credit

Proportionate Share contributions shall be applied as a credit against road impact fees. The Developer understands and agrees that in no event shall the Developer be entitled to road impact fee credits in excess of the Proportionate Share contribution and in the event the contribution exceeds the amount of road impact fees owed by the Project through buildout, Developer shall not be entitled to a refund for the Proportionate Share contribution in excess of such road impact fees, unless such credits are due Developer under other provisions of the County's ULDC.

Section 7. No refund

Proportionate Share contributions are non-refundable.

Section 8. Governing Law

The Agreement and the rights and obligations created hereunder shall be interpreted, construed and enforced in accordance with the laws of the United States and the State of Florida. If any litigation should be brought in connection with this Agreement, venue shall lie in Palm Beach County, Florida.

Section 9. Attorneys' Fees and Costs

The parties hereto agree that in the event it becomes necessary for either party to defend or institute legal proceedings as a result of the failure of either party to comply with the terms and provisions of this Agreement, each party in such litigation shall bear its own costs and expenses incurred and expended in connection therewith including, but not limited to, reasonable attorneys' fees and court costs through all trial and appellate levels.

Section 10. Severability

If any provision of this Agreement or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provisions to other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

Section 11. Agreement

This Agreement contains the entire agreement between the parties. No rights, duties or obligations of the parties shall be created unless specifically set forth in this Agreement.

Section 12. Amendment

No modification or amendment of this Agreement shall be of any legal force or effect unless it is in writing and executed by both parties.

Section 13. Binding Agreement

This Agreement shall inure to the benefit of and shall bind the parties, their heirs, successors and assigns.

Section 14. Waiver

Failure to enforce any provision of this Agreement by either party shall not be considered a waiver of the right to later enforce that or any provision of this Agreement.

Section 15. Notices

Any notice, request, demand, instruction or other communication to be given to either party under this Agreement shall be in writing and shall be hand delivered, sent by Federal Express or a comparable overnight mail service, or by U.S. Registered or Certified Mail, return receipt requested, postage prepaid, to County and to Developer at their respective addresses below:

As to County:

Tanya N. McConnell, P.E.
Deputy County Engineer
Engineering and Public Works Department
2300 North Jog Road, Third Floor
West Palm Beach, FL 33411

With a copy to County's Legal Representative:

Leonard Berger
Chief Assistant County Attorney
Palm Beach County Attorney's Office
301 North Olive Avenue
Suite 601
West Palm Beach, FL 33405

As to Developer:
Pulte Homes Corporation
24311 Walden Center Drive, Suite 300
Bonita Springs, Florida 34134
Attn: Rich McCormick, Division President, South Florida Division

with a copy to:
Pulte Homes
1400 Indian Creek Parkway
Jupiter, Florida 33458
Attn.: Tony Palumbo, Land Acquisitions Manager, South Florida Division

With a copy to:
Ellie Halperin, Esq.
Halperin Barkdull, PL
1601 Forum Place Suite 500
West Palm Beach, FL 33401

Section 17. Effective Date

The effective date of this Agreement shall be _____.

Section 18. Counterparts

This Agreement may be executed by the parties in any number of counterparts, each of which shall be deemed to be an original, and all of which shall be deemed to be one and the same Agreement.

[Signatures appear on page 6]

IN WITNESS WHEREOF, the parties hereunto have executed this Agreement on the date and year first above written.

R2015 1544 OCT 22 2015

ATTEST:

PALM BEACH COUNTY, FLORIDA, BY ITS
BOARD OF COUNTY COMMISSIONERS

SHARON R. BOCK,
CLERK & COMPTRROLLER

By: Noopy Powell
Deputy Clerk



By: Shelley Vana
Shelley Vana, Mayor

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:

[Signature]
County Attorney

APPROVED AS TO TERMS
AND CONDITIONS:

By: [Signature]
Traffic Engineering

ATTEST:

DEVELOPER: PULTE HOME CORPORATION, ~~INC~~ CA

[Signature]
Its Secretary
vice
PRESIDENT

By: [Signature]
Its Vice President