



# CITY OF PATASKALA BOARD OF ZONING APPEALS

City Hall, Council Chambers  
621 West Broad Street  
Pataskala, Ohio 43062

## STAFF REPORT

June 13, 2017

### Variance Application VA-17-012

<b>Applicant:</b>	Joel West - Pulte Homes of Ohio, LLC
<b>Owner:</b>	Pulte Homes of Ohio, LLC
<b>Location:</b>	Corylus Drive – 064-068322-00.001
<b>Acreage:</b>	57.6 Acres
<b>Zoning:</b>	R-7 – Village Single Family Residential
<b>Request:</b>	Requesting a variance from Section 1117.10 of the Pataskala Code to allow for the construction of a collector street that would fail to meet the minimum radius requirement.

#### Description of the Request:

The applicant is seeking a variance to construct a road with a 220-foot radius in the Hazelwood Section 5 Part 1 subdivision that would fail to meet the 350 minimum radius requirement.

#### Staff Summary:

The Final Development Plan for Hazelwood Section 5 Part 1 was originally approved in 2000 and consisted of 40 lots. The applicant is currently in the process of amending the Final Development Plan, which would reduce the number of lots to 34. From staff's understanding, the need to amend the Final Development is based on changes in stormwater management requirements. The amended Final Development Plan will appear before the Planning and Zoning Commission for consideration on June 7, 2017.

As part of the amended Final Development Plan, the applicant is proposing to reduce the minimum centerline radius of a collector street from 350 to 220 on Corylus Drive north of Burtwood Drive. Pursuant to Section 1123.05 of the Pataskala Code any variance request from the requirements of the Subdivision Regulations must be heard by the Board of Zoning Appeals.

#### Staff Review:

*The following review does not constitute recommendations but merely conclusions and suggestions based on the summary*

Staff does not see any issues with the proposal as both the Public Service Director and City Engineer do not believe it would be problematic.

**Surrounding Area:**

Direction	Zoning	Land Use
North	R-7 – Village Single Family Residential	Single Family Home
East	R-7 – Village Single Family Residential	Single Family Home
South	R-7 – Village Single Family Residential	Single Family Home
West	R-7 – Village Single Family Residential	Single Family Home

**Variance Requirements:**

According to Section 1211.07(1) of the Pataskala Code, the Board of Zoning appeals shall consider the following factors when determining if an area variance is warranted:

- a) *Whether the property in question will yield a reasonable return or if there can be a beneficial use of the property;*
- b) *Whether there are unique physical circumstances or conditions that prohibit the property being developed in strict conformity with the zoning regulation such that a variance is necessary to enable the reasonable use of the property;*
- c) *Whether the variance requested is substantial;*
- d) *Whether the essential character of the neighborhood would be substantially altered or the adjoining properties would suffer a substantial detriment as a result of the variance;*
- e) *Whether the variance, if granted, will substantially or permanently impair the appropriate use or development of adjacent property;*
- f) *Whether the variance, if granted, will be detrimental to the public welfare;*
- g) *Whether the variance, if granted, would adversely affect the delivery of government services;*
- h) *Whether the property owner purchased the subject property with knowledge of the zoning restriction;*
- i) *Whether the property owner’s predicament can be obviated through some other method than variance;*
- j) *Whether the variance, if granted, will represent the minimum variance that will afford relief and represent the least modification possible of the requirement at issue; and,*
- k) *Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance.*

Furthermore, Section 1211.07(2) allows other factors to be considered, including comments from City staff, when determining if an area variance is warranted. The following factors from Section 1211.07(2) are applicable to Variance Application VA-17-012:

- None

**Department and Agency Review**

- Zoning Inspector – No comments
- Public Service – See attached
- City Engineer – See attached
- Utility Department – No comments
- Police Department – No comments
- West Licking Joint Fire District – No comments
- Southwest Licking School District – No comments

**Supplementary Conditions:**

Should the Board choose to approve the applicant's request, the following supplementary conditions may be considered:

1. The applicant shall receive approval from the Planning and Zoning Commission for an amended Final Development Plan.

**Resolution:**

For your convenience, the following resolution may be considered by the Board of Zoning Appeals when making a motion:

"I move to (approve/disapprove) variance from Section 1117.10 of the Pataskala Code for variance application VA-17-012 ("with the following supplementary conditions" if supplementary conditions are to be placed on the approval)."

**From:** [Alan Haines](#)  
**To:** [Zachary Cowan](#)  
**Subject:** June 13 BZA - PSD Comments  
**Date:** Friday, June 02, 2017 3:11:42 PM

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Zach,

My comments for the subject BZA hearing are as follows:

1. VA-17-010
  - a. No comment
2. VA-17-011
  - a. No comment
3. VA-17-012
  - a. The developer and engineer have worked with the City to come to the proposed 220' radius as a compromise to best meet the needs of the City and the developer. This compromise also includes the stipulation that parking will be restricted to one side of the street along and between the two roadway curves.
  - b. City standards require 350' centerline radii for collector streets, and 150' minimum for local streets; however,
  - c. While Corylus Dr. is a collector street, I believe that the location and associated anticipated traffic would qualify this section of Corylus Dr. for the classification of a minor collector.
  - d. The City of Pataskala Codified Ordinances do not currently recognize minor collector streets separately, but it is recognized by ODOT and other roadway authorities.
  - e. Accordingly, I believe that the proposed design, with the given parking restriction, meets the requirements of a minor collector street, and meets the needs of the City.
4. VA-17-013
  - a. No comment
5. VA-17-014
  - a. No comment
6. VA-17-015
  - a. No comment
7. VA-17-016
  - a. No comment
8. CU-17-008
  - a. No comment

Let me know if questions or concerns.

Regards,

Alan W. Haines, P.E.  
Public Service Director  
City of Pataskala

621 W. Broad Street  
Suite 2B

Pataskala, Ohio 43062

Office: 740-927-0145

Cell: 614-746-5365

Fax: 740-927-0228

**From:** Jim Roberts  
**To:** [Zachary Cowan](#)  
**Cc:** [Alan Haines](#); [Scott Fulton](#); [Scott Haines](#); [Lisa Paxton](#)  
**Subject:** Review of June 13 BZA Agenda  
**Date:** Friday, May 19, 2017 7:38:20 AM

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Zack, per the request of the City of Pataskala, Jobes Henderson & Associates, Inc. has reviewed the agenda items for the June 13 Board of Zoning Appeals hearing. We offer the following engineering related comments:

- Case VA-17-010
  - We have no engineering comments on this application
- Case VA-17-011
  - This case is located within the Kylemore Subdivision, which has been identified as an area with drainage problems. Therefore, our only comment is this project cannot contribute to or add to any drainage issues in the area.
- Case VA-17-012
  - This is a new development that JHA has reviewed the engineering plans for already. We do not take exception to this reduced centerline radius for this roadway.
- Case VA-17-013
  - We do not have any engineering comments on this section. Our only observation would be to consider a possible Lot Combination to eliminate the issue.
- Case VA-17-014
  - Because the existing property is a church, parking should be adequate for this use.
  - Traffic to this facility will be during normal peak hour traffic (as opposed to the peak traffic time for the church operations). Therefore, the city needs to ensure no traffic or safety issues will occur as a result of this variance.
- Case VA-17-015 and VA-17-016
  - If the circumstances described are accurate, we do not take exception to this request from the engineering perspective.
  - The city should confirm the hardship tied to the setback request.
  - The city should require that drainage from the new structure be approved by the Service Director to ensure no future problems are created.
- Case VA-17-008
  - It appears the site will have adequate space for parking. However, how will parking be defined and will there be parking accommodations for ADA compliance?
  - While traffic to the facility may not be heavy, the city needs assurance that no safety issues will occur with heavier traffic flow into this driveway.

Please let us know if you have any questions or we can assist in any other way. We appreciate

the opportunity to work with the city on this issue.

Jim

**James G. Roberts, P.E.**

PRESIDENT

**Jobs Henderson**

A HULL COMPANY

59 Grant Street | Newark, Oh 43055

PH: (740) 344-5451 x 225 | FAX: (740) 344-8659

[jroberts@hullinc.com](mailto:jroberts@hullinc.com)

[www.jobshenderson.com](http://www.jobshenderson.com)

[www.hullinc.com](http://www.hullinc.com)

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## CITY OF PATASKALA BOARD OF ZONING APPEALS

City Hall, Council Chambers  
621 West Broad Street  
Pataskala, Ohio 43062

### VARIANCE APPLICATION

*(Pataskala Codified Ordinances Chapter 1211)*

<b>Property Information</b>	
Address: Corylus Drive	
Parcel Number: 064-068322-00.001	
Zoning: R-7	Acres: 57.603
Water Supply:	
<input checked="" type="checkbox"/> City of Pataskala	<input type="checkbox"/> South West Licking <input type="checkbox"/> On Site
Wastewater Treatment:	
<input checked="" type="checkbox"/> City of Pataskala	<input type="checkbox"/> South West Licking <input type="checkbox"/> On Site

<b>Staff Use</b>
Application Number: VA-17-012
Fee: \$300-
Filing Date: 5-5-17
Hearing Date: 6-13-17
Receipt Number: 20493

<b>Applicant Information</b>		
Name: Pulte Homes of Ohio, LLC (Joel West)		
Address: 4900 Tuttle Crossing Blvd.		
City: Dublin	State: Ohio	Zip: 43016
Phone: (614) 376-1122	Email: Joel.West@PulteGroup.com	

<b>Documents</b>
<input checked="" type="checkbox"/> Application
<input checked="" type="checkbox"/> Fee
<input type="checkbox"/> Narrative
<input checked="" type="checkbox"/> Site Plan
<input checked="" type="checkbox"/> Deed
<input checked="" type="checkbox"/> Address List
<input checked="" type="checkbox"/> Area Map

<b>Owner Information</b>		
Name: Pulte Homes of Ohio, LLC (Joel West)		
Address: 4900 Tuttle Crossing Blvd.		
City: Dublin	State: Ohio	Zip: 43016
Phone: (614) 376-1122	Email: Joel.West@PulteGroup.com	

<b>Variance Information</b>
Request (Include Section of Code): Deviate from the minimum required radius for Corylus Drive (collector street), from 350' to 220'. Code Section 1117.10
Describe the Project: Hazelwood Section 5, Part 1 consists of 15.709 acres with 34 detached single family lots and three reserves containing 2.323 acres of open space. Hazelwood Section 5 is another section of a larger overall development that was started back in 1998 and was originally Zoned R-3 and was subsequently changed to R-7 as a part of the Zoning Code revision.

<b>Documents to Submit</b>	
<b>Variance Application:</b> Submit 1 copy of the variance application.	
<b>Narrative Statement:</b> Submit 1 copy of a narrative statement explaining the following: <ul style="list-style-type: none"> <li>• The reason the variance is necessary</li> <li>• The specific reasons why the variance is justified as it pertains to Section 1211.07 of the Pataskala Code: <ol style="list-style-type: none"> <li><i>Whether the property in question will yield a reasonable return or if there can be a beneficial use of the property without the variance;</i></li> <li><i>Whether there are unique physical circumstances or conditions that prohibit the property from being developed in strict conformity with the zoning regulation such that a variance is necessary to enable the reasonable use of the property;</i></li> <li><i>Whether the variance requested is substantial;</i></li> <li><i>Whether the essential character of the neighborhood would be substantially altered or adjoining properties would suffer a substantial detriment as a result of the variance;</i></li> <li><i>Whether the variance, if granted, will substantially or permanently impair the appropriate use or development of adjacent property;</i></li> <li><i>Whether the variance, if granted, will be detrimental to the public welfare;</i></li> <li><i>Whether the variance, if granted, would adversely affect the delivery of governmental services;</i></li> <li><i>Whether the property owner purchased the subject property with knowledge of the zoning restriction;</i></li> <li><i>Whether the property owner's predicament can be obviated through some other method than variance;</i></li> <li><i>Whether the variance, if granted, will represent the minimum variance that will afford relief and represent the least modification possible of the requirement at issue; and,</i></li> <li><i>Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance.</i></li> </ol> </li> </ul>	
<b>Site Plan:</b> Submit 1 copy of a site plan to scale of the subject property indicating the following: <ul style="list-style-type: none"> <li>• All property lines and dimensions</li> <li>• All existing and proposed buildings and structures.</li> <li>• Setbacks from property lines for all existing and proposed buildings, structures and additions</li> <li>• Easements and rights-of-way</li> <li>• Driveways</li> <li>• Floodplain areas</li> <li>• Location of existing wells and septic/aerator systems.</li> <li>• Any other information deemed necessary for the variance request</li> </ul>	
<b>Deed:</b> Provide a copy of the deed for the property with any deed restrictions. Deeds can be obtained at <a href="http://www.lcounty.com/rec">www.lcounty.com/rec</a> .	
<b>Address List:</b> Submit 1 copy of a list of all property owners and addresses of those owning property within 200 feet or two parcels from any point on the subject property line, whichever creates more property owners. This list must be in accordance with the Licking County Auditor's current tax list and must be submitted on mailing labels.	
<b>Area Map:</b> Submit 1 copy of an area map from the Licking County Engineer's office showing the area encompassed by the address list. Area maps can be obtained at <a href="http://www.lcounty.com/taxparcelviewer/default">www.lcounty.com/taxparcelviewer/default</a> .	

<b>Signatures</b>	
I certify the facts, statements and information provided on and attached to this application are true and correct to the best of my knowledge. Also, I authorize City of Pataskala staff to conduct site visits and photograph the property as necessary as it pertains to this variance request.	
Applicant:  <b>PAUL R. LEWIS</b>	Date: <b>5/4/17</b>
Owner: <b>SAME AS APPLICANT</b>	Date:

May 5, 2017

Mr. Scott Fulton  
Director of Planning  
City of Pataskala  
621 West Broad Street, Suite 2-A  
Pataskala, Ohio 43062

Subject: Hazelwood Section 5 Part 1

Dear Mr. Fulton,

On behalf of our client, Pulte Homes of Ohio, LLC, we are respectfully requesting a variance to allow a collector street, Corylus Drive located within Hazelwood Section 5 Part 1, to have a centerline radius of two hundred and twenty (220) feet instead of the required three hundred and fifty (350) feet as stipulated under Section 1117.10 Special Street Types, Table 2 Collector Street Design Standards of the City of Pataskala Subdivision Regulations.

Due to the environmental concerns in association with the existing stream and wetlands located in or adjacent to the development as well as the location of the two stub streets into the development and the existing topography, this phase of Hazelwood is limited in its design flexibility. Many of these wetlands were not prevalent when the Hazelwood project was started numerous years ago. The developer to the greatest extent possible has limited the disturbance of the stream and wetlands while providing single family detached lots that meet the R-7 standards and the City of Pataskala Subdivision Regulations with the exception of centerline radius for two of the curves.

We feel that the variance request is justified based on the unique circumstances that are associated with this portion of the development. We therefore respectfully request the approval of the variance. Please feel free to give me a call if you have any questions.

Sincerely,

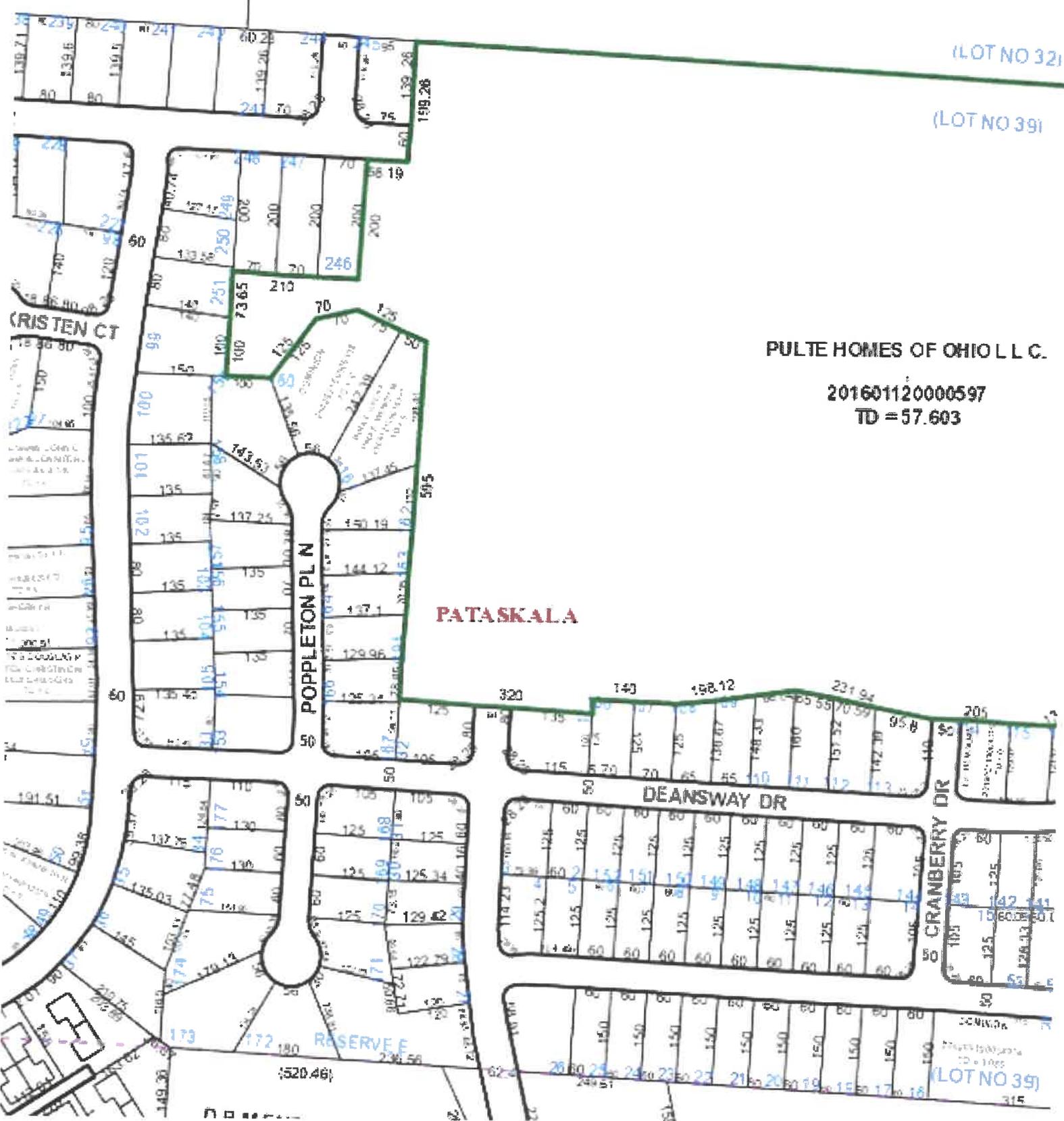
Jeffrey Adam Strung, PLA, ASLA  
Director of Planning and Landscape Architecture

F D T GROUP L L C.  
FDT GROUP L L C,  
201304160009643  
TD = 136.305

(LOT 1)

(LOT NO 32)

(LOT NO 39)



PULTE HOMES OF OHIO L L C.  
201601120000597  
TD = 57.603

PATASKALA

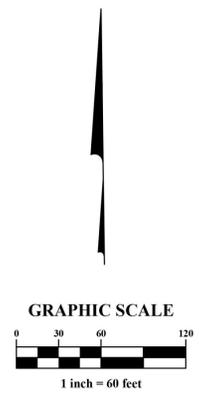
(LOT NO 39)

I:\20160623\Draw\04\Sheet3\Final\3\_Site\_Plan.dwg, Last Saved: 5/2/2017 3:31 PM, Ed: Shaun, 5/2/2017 12:46 PM (No Xrefs)



**LEGEND:**

-  House Pad (Approximate)
-  Street Lights:  
Street lights shall be required as per City of Pataskala Standard Drawings and Specifications. Light fixtures to be installed shall be the City of Pataskala Residential Colonial Style fixture.



MARK	DATE	DESCRIPTION

**PulteGroup**  
 4900 TUTTLE CROSSING BOULEVARD  
 DUBLIN, OHIO 43016  
 PH: 614-376-1000

FINAL PLAN FOR  
**HAZELWOOD SECTION 5 PART 1**  
 QUANTICO COMMUNITY CENTER  
 UNITED STATES MILITARY LANDS  
 CITY OF PATASKALA, HICKING COUNTY, OHIO  
 SITE PLAN

**EMHT**  
 Evans, Mechwart, Hamblen & Tilton, Inc.  
 Engineers • Surveyors • Planners • Geomatics  
 10000 W. Main Street, Suite 200  
 Columbus, Ohio 43240  
 Phone: 614.725.4800 Fax: 614.725.4800  
 emht.com

DATE	May 5, 2017
SCALE	1" = 60'
JOB NO.	2016062
SHEET	1/1

DESCRIPTION APPROVED  
WILLIAM C LOZIER  
LICKING COUNTY ENGINEER  
APPROVED BY  
*W.C. 4-8-16*

TRANSFERRED  
Date *April 12, 2016*  
*Michael Smith*  
Licking County Auditor *TS*  
SEC. 319.202 COMPLIED WITH  
MICHAEL L. SMITH, AUDITOR  
BY: *TS EX M*

  
201604120006938  
Pgs: 3 \$28.00 T20160007988  
04/12/2016 9:30AM BXPULTE  
Bryan A. Long  
Licking County Recorder

### LIMITED WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS, that MATTHEW J. CALLAHAN, TRUSTEE, the Grantor, for valuable consideration paid, grants, with limited warranty covenants, to PULTE HOMES OF OHIO LLC, a Michigan limited liability company, with offices at c/o Pulte Group, Inc., 3350 Peachtree Road Northeast, Floor 1600, Attn: Legal, Atlanta, GA 30326, the following real property:

Situated in the State of Ohio, County of Licking, City of Pataskala, and being more particularly described as follows:

Being Lot Numbers One Hundred Sixty-Eight (168) through One Hundred Seventy-Seven (177), both inclusive, of HAZELWOOD SECTION 3 PART 3, as the same are numbered and delineated upon the recorded plat thereof, of record in Instrument No. 201602190003300, Recorder's Office, Licking County, Ohio.

Tax Parcel Nos.: 064-068322-00.299, 064-068322-00.300, 064-068322-00.301, 064-068322-00.302, 064-068322-00.303, 064-068322-00.304, 064-068322-00.305, 064-068322-00.306, 064-068322-00.307, 064-068322-00.308.

Prior Instrument Reference: Instrument No. 201604120006937, and Instrument No. 201601120000597, Recorder's Office, Licking County, Ohio.

Subject to all conditions, easements, liens, encumbrances, reservations and restrictions of record, and all taxes and assessments not yet payable, which Grantee herein assumes and agrees to pay.

IN WITNESS WHEREOF, the said Grantor has hereunto set his hand this 10<sup>th</sup> day of March, 2016.

  
Matthew J. Callahan, Trustee

STATE OF OHIO,  
COUNTY OF FRANKLIN, SS:

The foregoing instrument was acknowledged before me this 10<sup>th</sup> day of March, 2016, by Matthew J. Callahan, Trustee.

  
Notary Public



Jill R. Hayes  
Notary Public, State of Ohio  
My Commission Expires 12-07-2020

This instrument prepared by:

David G. Gentry, Esq.  
Gentry Law Group, LLC  
2000 W. Henderson Rd., Suite 355  
Columbus, Ohio 43220  
(614) 929-5151

DESCRIPTION APPROVED  
WILLIAM C LOZIER  
LICKING COUNTY ENGINEER  
APPROVED BY: *W.C. Lozier* 4-8-16

TRANSFERRED  
Date *April 12, 2016*  
*Michael Smith*  
Licking County Auditor  
SEC. 319.202 COMPLIED WITH  
MICHAEL L. SMITH, AUDITOR  
BY: *Michael Smith*

  
201604120006937  
Pgs: 23 \$188.00 T20160007988  
04/12/2016 9:30AM BXPULTE  
Bryan A. Long  
Licking County Recorder

### SPECIAL WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS, that PULTE HOMES OF OHIO LLC, a Michigan limited liability company, with offices at c/o Pulte Group, Inc., 3350 Peachtree Road Northeast, Floor 1600, Attn: Legal, Atlanta, GA 30326, the Grantor herein, for the consideration of Ten Dollars (\$10.00) received to its full satisfaction of MATTHEW J. CALLAHAN, TRUSTEE, the Grantee, whose tax mailing address is 4900 Tuttle Crossing Blvd., Dublin, Ohio 43016, does, this 10<sup>th</sup> day of March, 2016, give, grant, bargain, sell, and convey unto the said Grantee, his successors and assigns forever, the following described premises:

Situated in the State of Ohio, County of Licking, City of Pataskala, and being more particularly described as follows:

Being Lot Numbers One Hundred Sixty-Eight (168) through One Hundred Seventy-Seven (177), both inclusive, of HAZELWOOD SECTION 3 PART 3, as the same are numbered and delineated upon the recorded plat thereof, of record in Instrument No. 201602190003300, Recorder's Office, Licking County, Ohio.

Tax Parcel Nos.: 064-068322-00.299, 064-068322-00.300, 064-068322-00.301, 064-068322-00.302, 064-068322-00.303, 064-068322-00.304, 064-068322-00.305, 064-068322-00.306, 064-068322-00.307, 064-068322-00.308.

Prior Instrument Reference: Instrument No. 201601120000597, Recorder's Office, Licking County, Ohio.

Subject to all conditions, easements, liens, encumbrances, and restrictions of record, and all taxes and assessments not yet payable, which Grantee herein assumes and agrees to pay.

The Grantor hereby covenants with the Grantee and his successors and assigns that the premises are free and clear of all liens and encumbrances whatsoever created by or under the Grantor except (a) real estate taxes and assessments, if any, not presently due and payable, (b) zoning and building laws, ordinances, and regulations, (c) legal highways, (d) restrictions, conditions, and easements of record, and all other liens and encumbrances of record or otherwise affecting such premises; and that the Grantor will forever warrant and defend the premises, with the appurtenances, unto the Grantee and his successors and assigns against the lawful claims of all persons claiming through the Grantor except as above noted.

In pursuance of a general plan for the protection, benefit, and mutual advantage of all lots described above and of all persons who now are or may hereafter become owners of any of said lots or parts thereof, and as part of the consideration for this conveyance, the Grantor executes and delivers this deed, and the Grantee accepts the same, subject to each and all of the following reservations, restrictions, conditions, easements, covenants, obligations, and charges (hereinafter collectively called "Restrictions") which are for the mutual benefit and protection of and shall be enforceable by any of the present or future owners of said lots and other lots in the Hazelwood subdivision with similar restrictions including, but not limited to, lots described in: (i) Instrument No. 200603090006724; (ii) Instrument No.

200409160033528; (iii) Instrument No. 200211050041959; (iv) Instrument No. 200209190034933; and (v) Instrument No. 200204090013551, Recorder's Office, Licking County, Ohio.

It is intended and understood that all or part of the premises described in this Special Warranty Deed shall be conveyed back to the Grantor. Such re-conveyance or any transfer or conveyance which may result in the same person acquiring all of the premises or more than one lot shall not result in a merger of the interest so as to result in the extinguishment of the Restrictions, it being the intent of the Grantor that the Restrictions remain at all times in full force and effect notwithstanding any such event.

#### I. DEFINITIONS

A. "Annual Assessment" -- amount to be paid to the Association by each Owner annually.

B. "Assessments" -- collectively referring to Annual Assessments, Lot Assessments and Special Assessments.

C. "Association" -- Hazlewood [sic] Association, Inc., an Ohio non-profit corporation formed by Grantor, its successors and assigns.

D. "Association Governing Documents" -- these Restrictions, the articles of incorporation, code of regulations, by-laws and any and all procedures, rules, regulations or policies adopted by the Association or its Board.

E. "Board" -- the board of trustees of the Association.

F. "Common Expenses" -- expenses incurred in owning, maintaining, or improving the Common Property, or in operating the Association pursuant to the Association Governing Documents.

G. "Common Property" -- all real and personal property now or hereafter acquired, pursuant to these Restrictions or otherwise, and owned by the Association for the common use and the enjoyment of the Owners, or for the operation of the Association.

H. "Entrance Feature Area" the entrance features described in Article IX, Paragraph E of these Restrictions.

I. "Grantor" – Pulte Homes of Ohio LLC and any officer, successor or assign thereof to which Grantor specifically assigns any of its rights under these Restrictions by a written instrument.

J. "Improvements" -- all buildings, outbuildings, garages and structures; overhead, aboveground and underground installations, including without limitation, utility facilities and systems, lines, pipes, wires, towers, cables, conduits, poles, antennae and satellite dishes; flagpoles; swimming pools; tennis and all other types of permanently installed recreational courts, fixtures and facilities; slope and drainage alterations; roads, driveways, uncovered parking areas and other paved areas; fences, trellises, walls, retaining walls, exterior stairs, patios and porches, and all other structures of every type.

K. "Lot" -- a discrete parcel of real property identified upon the recorded subdivision plat of the Property, or recorded re-subdivision thereof and any other discrete parcel of real property designated as a Lot by Grantor, excluding the Common Property and any portion of the Property dedicated for public use.

L. "Lot Assessment" -- an assessment that the Board may levy against one or more Lots to reimburse the Association for costs incurred on behalf of those Lot(s), or the Owner or occupants thereof, including without limitation, costs associated with making repairs that are the responsibility of the Owner of those Lots; costs of additional insurance premiums reasonably allocable to an Owner; costs of any utility expenses chargeable to an Owner but not separately billed by the utility company; and all other charges reasonably determined to be a Lot Assessment by the Board.

M. "Manager" -- the person or entity retained by the Board to assist in the management of the Association as set forth in Section IV, Paragraph F of the Restrictions.

N. "Member" -- any person or entity entitled to membership in the Association, as provided for in Article III.

O. "Owner" -- the record owner, whether one or more persons or entities, of fee simple title to a Lot, including contract sellers, but excluding those having an interest merely as security for performance of an obligation, and also excluding the Grantor.

P. "Property" -- the premises described on page one, such additional property as may be annexed by amendment to these Restrictions, other sections of Hazelwood that have been or will in the future be developed by Grantor and subjected

to these Restrictions, or property that is owned in fee simple by the Association, together with all easements and appurtenances.

Q. "Reserve Fund" -- the fund that may be established pursuant to Article V.

R. "Rules" -- the rules and regulations governing use of the Property and the Common Property, as may be established by the Board from time to time pursuant to Article IV.

S. "Special Assessment" -- an assessment levied by the Association through its Board, against all Lots pursuant to Article V, to pay for capital expenditures, interest expense on indebtedness incurred for the purpose of making capital expenditures, unanticipated operating deficiencies, or any other purpose determined appropriate by the Board in furtherance of its functions hereunder.

T. "State" -- the State of Ohio.

U. "Turnover Date" -- the date on which Grantor relinquishes its exclusive right to appoint all members of the Board, which date shall be no later than the date Grantor closes on the sale of the last Lot it owns in the Hazelwood subdivision, as it may be ultimately enlarged by the annexation of additional phases.

## II. GOALS

The covenants, easements, conditions and restrictions contained in these Restrictions are declared to be in furtherance of the following purposes:

- A. Compliance with all zoning and similar governmental regulations;
- B. Promotion of the health, safety and welfare of all Owners and residents of the Property;
- C. Preservation, beautification and maintenance of the Property and all Improvements; and
- D. Establishment of requirements for the development and use of the Property.

### III. MEMBERSHIP AND VOTING RIGHTS

A. Membership. Every Owner shall be deemed to have a membership in the Association. Membership is a right appurtenant to and inseparable from an Owner's fee simple title in a Lot, and such right of membership shall automatically transfer to any transferee of fee simple title to a Lot at the time such title is conveyed or at such time as a land installment contract is entered and recorded for the conveyance of fee simple title. The foregoing is not intended to include persons who hold an interest merely as security for the performance of an obligation, and the giving of a security interest or mortgage shall not terminate an Owner's membership. No Owner, whether one or more persons, shall have more than one membership per Lot owned. In the event an Owner consists of more than one person, such persons shall have one membership in the Association as tenants in common.

B. Governance. Voting and all other matters regarding the governance and operation of the Association shall be set forth in the Association Governing Documents.

### IV. RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

A. Common Property.

1. Grantor may, from time to time, at Grantor's option, convey to the Association for the use and benefit of the Association and the Members, real or personal property, or any interest therein, as part of the Common Property in the nature of an easement appurtenant to the Property. The Association shall accept title to any interest in any real or personal property transferred to it by Grantor. The Association, subject to the rights of the Owners set forth in these Restrictions and the Association Governing Documents, and subject also to budget limitations and the business judgment rule, shall be responsible for the exclusive management and control of the Common Property, if any, and all improvements thereon, and shall keep that property in good, clean, attractive, and sanitary condition, order and repair.

2. Subject only to budgetary limitations and the Board's right to exercise its reasonable judgment, the Association shall operate; maintain, repair and replace entry feature(s) in the Entrance Feature Area and on all other Common Property and shall keep the Entrance Feature Area in good, clean and attractive condition, order and repair. The Association by its Board, shall have the right to establish and enforce rules and regulations pertaining to the operation, maintenance and use of the Entrance Feature Area.

B. Personal Property and Real Property for Common Use. The Association may acquire, hold, manage, operate, maintain, improve, mortgage and dispose of tangible and intangible personal property and real property in addition to that property conveyed to it by Grantor.

C. Cost-Sharing Agreements. The Association may enter into cost-sharing agreements with other home owners' associations pursuant to which the Association agrees to share in the cost of maintaining, repairing and replacing entranceway features, landscaping, storm water retention facilities, mounding, fencing and any other improvements that benefit the Property or the members of the Association.

D. Rules and Regulations. The Association may make and enforce reasonable rules and regulations governing the use of the Property, which shall be consistent with these Restrictions and the Association Governing Documents. The Association shall have the power to impose sanctions on Owners, including without limitation: (1) reasonable monetary fines which shall be considered Lot Assessments; (2) suspension of the right to vote as a Member of the Association; and (3) suspension of the right to use the Common Property or any part of the Common Property. In addition, the Board shall have the power to seek relief in any court for violations or to abate unreasonable disturbances. If the Board expends funds for attorneys' fees or litigation expenses in connection with enforcing any provision of these Restrictions, any other Association Document, or any Rules, against any Owner, tenant, guest or invitee of any Owner, the amount so expended shall be due and payable by such Owner as set forth in Section V(F), and shall be included as a Lot Assessment against such Owner's Lot.

E. Implied Rights. The Association may exercise any other right or privilege given to it expressly by the laws of the State and these Restrictions, and every other right or privilege reasonably implied from the existence of any right or privilege granted in these Restrictions, or reasonably necessary to effect any such right or privilege.

F. Managing Agent. The Board may retain and employ on behalf of the Association a Manager, which may be Grantor, and may delegate to the Manager such duties as the Board might otherwise be authorized or obligated to perform. The compensation of the Manager shall be a Common Expense. The term of any management agreement shall not exceed three years and shall allow for termination by either party, without cause, and without penalty, upon no more than 90 days' prior written notice.

G. Insurance.

1. The Association shall obtain and maintain a comprehensive policy of public liability insurance insuring the Association, the trustees, and the Owners and occupants, with such coverage and limits as the trustees may determine, covering claims for personal injury and/or property damage arising by reason of acts or omissions by or on behalf of the Association or otherwise.

2. The Association may, in the Board's discretion, obtain and maintain the following insurance: (a) fidelity bond coverage and workers' compensation insurance for all officers, directors, board members and employees of the Association and all other persons handling or responsible for handling funds of the Association, (b) adequate comprehensive general liability insurance, (c) officers' and trustees' liability insurance to fund the obligations of the Association under Section X(D), (d) additional insurance against such other hazards and casualties as is required by law, and (e) any other insurance the Association deems necessary.

3. In the event of damage or destruction of any portion of the Common Property, the Association shall promptly repair or replace the same, to the extent that insurance proceeds are available. Each Owner hereby appoints the Association as its attorney-in-fact for such purpose. If such proceeds are insufficient to cover the cost of the repair or replacement, then the Board may levy a Special Assessment pursuant to Section V(D) to cover the additional costs.

H. Condemnation. The Association shall represent the Owners in any condemnation proceedings or in negotiations, settlements and agreements with the condemning authority for acquisition of the Common Property, or any portion thereof. Each Owner hereby irrevocably appoints the Association as its attorney-in-fact for such purpose. The awards or proceeds of any condemnation action shall be payable to the Association, to be held and used for the benefit of the Owners, as determined by the Board.

I. Books; Records. Upon reasonable request of any Member, the Association shall be required to make reasonably available for inspection by any Member all books, records and financial statements of the Association.

## V. ASSESSMENTS

A. Reserve Fund. The Board, at its discretion, may establish and maintain a Reserve Fund for financing the operation of the Association, for paying necessary costs and expenses of operating the Association, and/or repairing and maintaining Common Property or components thereof.

B. Types of Assessments. Subject to the option described in Section V(C), the Grantor, for each Lot owned, covenants and agrees, and each Owner, by accepting a deed to a Lot, is deemed to covenant and agree, to pay to the Association the following assessments: (1) Annual Assessments; (2) Special Assessments; and (3) Lot Assessments. No Owner may gain exemption from liability for any Assessment by waiving or foregoing the use or enjoyment of any of the Common Property or by abandoning his/her Lot. Annual and Special Assessments shall be fixed at a uniform rate for all Lots.

C. Annual Assessments. The Board shall annually estimate the Common Expenses and the expenses, if any, it expects the Association to incur in the Association's next ensuing fiscal year for the maintenance, operation and management of the Association (which may include amounts, if any, for the Reserve Fund -- as may be determined by the Board), and shall assess each Owner of a Lot an Annual Assessment equal to such estimated expenses divided by the total number of Lots. The Annual Assessments shall be paid in accordance with the procedures set forth in the Association Governing Documents and the Rules. Notwithstanding the foregoing to the contrary, prior to the date that Grantor relinquishes its right to appoint members of the Board as set forth in the Association Governing Documents (the "Turnover Date"), Grantor may elect to pay the Annual, Special or Lot Assessments applicable to Lots owned by Grantor or in lieu thereof, not pay such Annual Assessments, and to instead pay any deficit incurred in operating the Association, determined annually.

D. Special Assessments. The Board may levy against all Lot(s) and Owners a Special Assessment to pay for capital expenditures, interest expense on indebtedness incurred for the purpose of making capital expenditures and not to be paid out of the Reserve Fund; unanticipated operating deficiencies or any other purpose determined appropriate by the Board in furtherance of its functions hereunder.

E. Lot Assessments. The Board may levy a Lot Assessment against any Lot(s) and the Owner(s) thereof to reimburse the Association for costs incurred on behalf of the Lot(s), or as a consequence of any act or omission by any Owner, occupant, or invitee, including without limitation, costs associated with making repairs that are the responsibility of the Owner; costs of additional insurance premiums specifically allocable to an Owner; costs of any utility expenses chargeable to an Owner but not separately billed by the utility company; and all other fines and charges reasonably determined to be a Lot Assessment by the Board. Upon its determination to levy a Lot Assessment, the Board shall give the affected Owner(s) written notice and the right to be heard by the Board or a duly appointed committee thereof in connection with such Lot Assessment, 10 days prior to the effective date of the levy of any Lot Assessment. The Board may levy a Lot Assessment in the nature of a fine reasonably determined by the Board against the Lot of any Owner who violates the Rules, or any provision of the Association Governing Documents, or who suffers or permits his/her family members, guests, invitees or tenants to violate such Rules or any provision of the Association Governing Documents, including these Restrictions.

F. Remedies.

1. Late Charge. If any Assessment remains unpaid for ten (10) days after all or any part thereof shall become due and payable, the Board may charge interest from and after that date at the lesser of the rate of twelve percent (12%) per annum or the highest rate permitted by law, together with an administrative collection charge of Twenty-five Dollars (\$25.00).

2. Liability for Unpaid Assessments. Each Assessment or installment of an Assessment, together with interest thereon and any costs of collection, including reasonable attorneys' fees shall become the personal obligation of the Owner(s) beginning on the date the Assessment or installment thereof becomes due and payable. The Board may authorize the Association to institute an action at law on behalf of the Association against the Owner(s) personally obligated to pay any delinquent assessment. Except upon the commencement of a foreclosure by a bona fide first-mortgage lender, an Owner's personal obligation for a Lot's delinquent Assessments shall also be the personal obligation of his/her successors in title who acquire an interest after any Assessment becomes due and payable and both such Owner and his/her successor in title shall be jointly and severally liable therefor. Except as otherwise provided herein, the transfer of an interest in a Lot other than by foreclosure by a holder of a bona fide first-mortgage lender shall neither impair the Association's lien against that Lot for any delinquent Assessment nor prohibit the Association from foreclosing that lien.

3. Liens. All unpaid Assessments, together with any interest and charges thereon or costs of collection, shall constitute a continuing charge in favor of the Association and a lien on the Lot against which the Assessment was levied. If any Assessment remains unpaid for 10 days after it is due, then the Board may authorize any officer or appointed agent of the Association to file a certificate of lien for all or any part of the unpaid balance of that Assessment, together with interest and collection costs, including attorneys' fees, with the appropriate governmental office. The certificate shall contain a description of the Lot which the lien encumbers, the name(s) of the Owner(s) of that Lot, and the amount of the unpaid portion of the Assessment. The certificate may be signed by any officer, authorized agent or Manager of the Association. Upon the filing of the certificate, the subject Lot shall be encumbered by a continuing lien in favor of the Association. The Assessment lien shall remain valid for a period of five years from the date such certificate is duly filed, unless the lien is released earlier or satisfied in the same manner provided by the law of the State for the release and satisfaction of mortgages on real property, or until the lien is discharged by the final judgment or order of any court having jurisdiction. Notwithstanding the foregoing, the lien for Assessments provided for in this section shall be subordinate to the lien of any bona fide first mortgage on a Lot, that is recorded before the recording of a certificate of lien by the Association.

4. Vote on Association Matters; Use of Common Property. If any Assessment remains unpaid for thirty (30) days after it becomes due, then the delinquent Owner's voting rights upon Association matters and privileges to use the Common Property, except for necessary ingress and egress to his/her Lot, shall be suspended until such Assessment is paid.

## VI. MAINTENANCE

A. Maintenance by Association. Subject only to budgetary limitations and the right of the Board to exercise reasonable business judgments, the Association shall maintain and keep in good repair the Common Property. This maintenance shall include, without limitation, maintenance, repair, and replacement of all landscaping and other flora, structures, and improvements situated upon the Common Property and all personal property used in connection with the operation of the Common Property.

B. Maintenance by Owner. Each Owner or occupant shall repair, replace, and maintain in good order and condition, at his/her expense, portions of, improvements to, structures on, and, equipment and components used in connection with, his/her Lot. This maintenance responsibility includes, without limitation, promptly furnishing all necessary materials and performing or causing to be performed at his/her own expense all maintenance, repairs and replacements within such Lot that, if omitted, would adversely affect the safety and usefulness of the Common Property. Each Owner shall maintain those portions of his/her Lot that are adjacent to any portion of the Common Property in accordance with the Rules and the requirements set forth in these Restrictions.

C. Right of Association to Repair Lot. If any Owner fails to maintain his/her Lot in the manner required herein, and said Lot remains in disrepair for a period of 30 days after notification by the Grantor or the Association to said Owner, and if the Board determines that any maintenance of that Lot is necessary to ensure public safety, to permit reasonable use or enjoyment of the Common Property by Owners, to prevent damage to or destruction of any other part of the Common Property or to comply with the Rules or the terms of these Restrictions, then the Board may authorize its employees or agents to enter the Lot at any reasonable time to complete the necessary maintenance and the Board may levy a Lot Assessment for all reasonable expenses incurred.

D. Damage to Common Property By Owner or Occupant. If the Common Property is damaged by any Owner or occupant, his/her family, guests, or invitees, then the Board may levy a Lot Assessment against such Owner for the cost of repairing or replacing the damaged property. The Association shall be entitled to enter a Lot to repair or maintain any Common Property adjacent to such Lot.

## VII. ARCHITECTURAL STANDARDS

All Property at any time subject to these Restrictions shall be governed and controlled by the provision of this article.

A. Design Review Board. The Design Review Board shall be a board consisting of three (3) persons. Until the Turnover Date, Grantor shall have the sole

and exclusive right to appoint and remove all three members of the Design Review Board at will. After the Turnover Date, the Board shall have the right to appoint all three members to the Design Review Board at will. The Design Review Board shall have the exclusive authority, by action of two or more of the members thereof, at a private or public meeting to determine the architectural standards which shall govern the construction of Improvements on the Property. Each Owner covenants and agrees by acceptance of a deed to a Lot, to comply with, and to cause his/her Lot and any occupant thereof to comply with the standards adopted by the Design Review Board. No Improvement shall be placed, erected or installed on the Property, and no construction (which term shall include in its definition staking, clearing, excavation, grading and other site work) shall be commenced or continued until and unless the Owner first obtains the written approval thereof of the Design Review Board and otherwise complies with all provisions of these Restrictions.

B. Modifications. Except as otherwise provided in these Restrictions, the Design Review Board shall have jurisdiction over all construction, modifications, additions or alterations of Improvements on or to the Property. No person shall construct any Improvement on any Lot, including without limitation, alter surfaces of existing Improvements, change paint colors or roofing materials, construct or modify fencing, or install any permanent recreational device, without the prior written consent of the Design Review Board. Owners shall submit plans and specifications showing the nature, kind, shape, color, size, materials and location of Improvements and alterations to the Design Review Board for its approval. Nothing contained herein shall be construed to limit the right of an Owner to remodel or decorate the interior of his/her residence.

C. Variances. To avoid unnecessary hardship and/or to overcome practical difficulties in the application of the provisions of these Restrictions, the Design Review Board shall have the authority to grant reasonable variances from the provisions of Article VIII, provided that the activity or condition is not prohibited by applicable law; and provided further that, in their judgment, the variance is in the best interest of the community and is within the spirit of the standards of the Design Review Board. No variance granted pursuant to this section shall constitute a waiver of any provision of these Restrictions as applied to any other person or any other part of the Property.

D. Improvements by Grantor. Notwithstanding the foregoing to the contrary, all Improvements and landscaping constructed by the Grantor or its partners, members or shareholders shall be deemed to comply in all respects with the requirements of the Design Review Board.

## VIII. USE RESTRICTIONS

The following restrictions and covenants concerning the use and occupancy of the Property shall run with the land and be binding upon the Grantor, its members and every Owner or occupant, their heirs, successors and assigns, as well as their family members, guests, and invitees.

A. Use of Lots. No Lot shall be used except for residential purposes; provided, however, that the foregoing shall not prohibit the operation of builders' model homes. No building shall be erected, altered, placed, or permitted to remain on any Lot other than one single-family dwelling not to exceed two and one-half stories in height, and each such dwelling shall have a two-car attached garage. No bi-level homes shall be permitted in the subdivision. As used herein, "bi-level home" shall mean a home having two levels with an integral garage on the lower level. No home shall be constructed on any Lot having a garage with a lower elevation than the street elevation such that the garage and/or driveway are depressed below the finished grade of the Lot. No structure of a temporary character, trailer, basement, tent, shack, garage, barn, or other outbuilding shall be used on any Lot at any time as a residence either temporarily or permanently, provided, however, that nothing herein shall prevent the use of trailers or temporary buildings by builders for construction management and related uses during the construction of homes within the Property.

B. Use of Common Property. The Common Property may be used only in accordance with the purposes for which they are intended and for any reasonable purposes incidental to the residential use of the Property. All uses of the Common Property shall benefit or promote the health, safety, welfare, convenience, comfort, recreation, and enjoyment of the Owners and occupants, and shall comply with the provisions of these Restrictions, all other Association Governing Documents, the laws of the State, and the Rules.

C. Hazardous Actions or Materials. Nothing shall be done or kept in any Lot or in or on any portion of the Common Property that is unlawful or hazardous, that might reasonably be expected to increase the cost of casualty or public liability insurance covering the Common Property, or that might or that does unreasonably disturb the quiet occupancy of any person residing on any other Lot. This paragraph shall not be construed so as to prohibit the Grantor, its members or any other builder in the subdivision from construction activities consistent with reasonable residential construction practices.

D. Signs. No signs of any character shall be erected, posted or displayed upon the Property, except: (1) marketing signs installed by the Grantor and its members while marketing the Lots and residences for sale; (2) street and identification signs installed by the Association or the Grantor; and (3) one temporary real estate sign not to exceed six square feet in area advertising that such Lot is for sale.

E. Animals. No person may keep, breed, board or raise any animal, livestock, reptile, or poultry of any kind for breeding or other commercial purpose on any Lot, or in or upon any part of the Common Property, unless expressly permitted by the Rules.

F. Nuisances. No noxious or offensive trade shall be permitted on the Property or within any dwelling located on the Property. No soil shall be removed for any commercial purpose.

G. Business. No industry, business, trade, occupation or profession of any kind may be conducted, operated or established on the Property, without the prior written approval of the Board.

H. Storage Buildings. No storage buildings, barns or sheds of any kind are permitted on any Lot. This section shall not apply to any storage as may be necessary or appropriate during the construction of residences on the Lots.

I. Hotel/Transient Uses; Leases. No Lot may be used for hotel or transient uses, including without limitation, uses in which the occupant is provided customary hotel services such as room service for food and beverage, maid service, furnishing laundry and linen, or similar services, or leases to roomers or boarders. All leases shall be in writing and shall be subject to these Restrictions, the other Association Governing Documents, and the Rules.

J. Vehicles. The Board is hereby granted the power and the authority to create and enforce reasonable rules concerning placement and the parking of any vehicle permitted on the Property, so long as those rules are consistent with, and do not amend, any of the terms of the restriction in this section. In addition to its authority to levy Lot Assessments as penalties for the violation of such rules, the Board shall be authorized to cause the removal of any vehicle violating such rules.

Except as specified below, no trucks, no prohibited commercial vehicles, no boats, no trailers, no buses, no campers and no mobile homes shall be parked or stored on any street in the Subdivision, or on any Lot in the Subdivision (except in an enclosed structure shielded from view) for any time period longer than forty-eight (48) hours in any thirty (30) day period, provided, however, that nothing contained herein shall prohibit the reasonable use of such vehicles as may be necessary during construction of residences on the Lots.

For the purpose of this section, the terms "truck" and "prohibited commercial vehicle" shall include all vehicles that have a length of more than 21 feet; all vehicles that include any visible exterior or unenclosed storage of tools or materials (except no more than two (2) visible ladders). Dump trucks, tow trucks, flat bed car

hauling trucks, panel trucks and vans larger than one-ton capacity, pickup trucks larger than one ton capacity and semi type tractors and trailers, shall in every instance be considered to be a prohibited truck and/or a prohibited commercial vehicle. For the purpose of this section, the word "trailer" shall include landscaping trailer, open bed trailer, trailer coach, house trailer, mobile home, automobile trailer, camp car, camper or any other vehicle, whether or not self-propelled, constructed or existing in such a manner as would permit use and occupancy thereof, or for storage or the conveyance of personal property, whether resting on wheels, jacks, tires or other foundation.

Furthermore, no automobile, truck, or other motor-driven vehicle, or trailer, in a condition where it is unlicensed, unregistered, apparently inoperable, extensively damaged, disabled, dismantled, or otherwise not in a condition to be lawfully operated upon the public highway, or any vehicle component or part, shall be placed, parked or stored in any visible location on or in front of a Lot or residence for a period of time longer than thirty (30) days. After this time the vehicle, trailer or part shall be deemed to be a nuisance, and shall be removed.

K. Trash. Except for the reasonably necessary activities of the Grantor or its members during the original development of the Property, no burning or storage of trash of any kind shall be permitted on the Property. All trash shall be deposited in covered, sanitary containers, and screened from view.

L. Antennae. No outside television or radio aerial or antenna, or other aerial or antenna, including satellite receiving dishes, for reception or transmission, shall be installed or maintained on the Property except for satellite receiving dishes 24" in diameter or smaller which cannot be seen from any street.

M. Utility Lines. All utility lines on the Property shall be underground, subject only to the requirements of governmental authorities having jurisdiction and utility companies.

N. Tanks. No tanks for the storage of propane gas, fuel oil or any other combustible substance shall be permitted to be located above or beneath the ground of any Lot except that propane gas grills are permitted.

O. Street Tree. Grantor may designate one (1) or more trees as deemed necessary by Grantor along the street in front of each Lot. If Grantor determines to designate street tree(s) then the Owners agree to install and maintain such uniform street trees. Each Owner shall care for, and, if necessary, replace such tree or trees at the Owner's expense with a like type of tree.

P. Mailbox. Grantor may designate and require a curb side mailbox for each Lot, with a design and composition that will provide uniformity to the subdivision. Each mailbox shall have the street numbers for the Lot on each side of such mailbox. If the

mailbox is damaged, destroyed or deteriorates, then each Owner, at such Owner's expense, shall repair or replace such mailbox with another of a like kind, design, pattern and color as the initial mailbox.

Q. Yard Lights and Lamp Posts. All yard lights and lamp posts shall conform to the standards set forth by the Design Review Board.

R. Fencing. Fences or walls are permitted in accordance with the following requirements:

1. Fences or walls shall be constructed of wood, approved plastic, stone or brick only, and in no event shall chain link or other metal or wire fencing be permitted.

2. No fence or wall shall be constructed in excess of four (4) feet above finished grade.

3. Fences or walls shall not be located closer to the street than a line parallel to the street and extending from the rear corner of the home, and in no event shall fences be located closer to any street than the building line shown on the recorded plat, except for ornamental railings, walls or fences not exceeding three (3) feet in height located on or adjacent to entrance platforms or steps.

4. Fences installed by Grantor or the Association within any common area or landscape or entry easement area shall not be subject to the provisions of Paragraphs 1, 2, or 3, above, and Grantor or the Association shall have the right to maintain or replace such fencing.

S. Swimming Pools. No above-ground swimming pool extending twelve (12) inches or more above the finished grade of the Lot shall be permitted upon any Lot except that this Section VIII(S) shall not be intended to prohibit the installation of a hot tub or sauna. In the event an in-ground swimming pool is installed on a Lot and applicable governmental safety regulations require a fence of a height greater than provided for under Section VIII(R) above, then such higher fence shall be permitted notwithstanding any provision of said Section VIII(R) to the contrary, provided such higher fence shall be subject to prior written approval of the Design Review Board as to design and location on the Lot. All other restrictions set forth in Section VIII(R), including but not limited to construction and construction material, setbacks and repair and maintenance shall extend to any fencing around in-ground pool areas.

T. Miscellaneous. The following structures and improvements shall not be permitted on any Lot in the Subdivision: (1) outdoor clotheslines; and (2) window air conditioning units on any window facing the street.

## IX. EASEMENTS AND LICENSES

A. Easement of Access and Enjoyment Over Common Property. Every Owner shall have a right and easement (in common with all other Owners) of enjoyment in, over, and upon the Common Property, and a right of access to and from his/her Lot, which rights shall be appurtenant to, and shall pass with the title to, his/her Lot, subject to the terms and limitations set forth in these Restrictions, subject to the Rules. An Owner may delegate his/her rights of access and enjoyment to family members, occupants, guests and invitees.

B. Right of Entry for Repair. The duly authorized agents, officers, contractors, and employees of the Association shall have a right of entry and access to the Property, including without limitation the Lots, for the purpose of performing the Association's rights or obligations set forth in these Restrictions. The Association may enter any Lot to remove or correct any violation of these Restrictions or the Rules, or to maintain, repair, and replace the Common Property, but only during reasonable hours and after providing seventy-two (72) hours advance notice to the Owner, except in cases of emergency.

C. Easement for Utilities and Other Purposes . The Board or Grantor may convey easements over the Common Property to any entity for the purpose of constructing, installing, maintaining, and operating poles, pipes, conduit, wires, ducts, cables, and other equipment necessary to furnish electrical, gas, sewer, water, telephone, cable television, and other similar utility or security services, whether of public or private nature, to the Property and to any entity for such other purposes as the Board or Grantor deems appropriate; provided that such equipment or the exercise of such easement rights shall not unreasonably interfere with the Owners' use and enjoyment of the Property. The Board or Grantor may grant such easements over all portions of the Property for the benefit of adjacent properties as the Board or Grantor deems appropriate; provided that the grant of such easements imposes no undue, unreasonable, or material burden or cost upon the Property; and further provided that the Board or Grantor may not convey any easement over a Lot without the prior written consent of the Owner of such Lot (which consent shall not be unreasonably delayed or withheld).

D. Easement for Services. A non-exclusive easement is hereby granted to all police, firemen, ambulance operators, mailmen, deliverymen, garbage removal personnel, and all similar persons, and to the local governmental authorities and the Association (but not to the public in general) to enter upon the Common Property to perform their duties.

E. Entry Feature. An easement was granted, declared and reserved by a Special Warranty Deed of record at Instrument No. 200204090013551 in favor of the Grantor and the Association over, under and upon a portion of Lot 26 of Section 1 Part 1 of Hazelwood subdivision (the "Entrance Feature Area"), to construct, repair, reconstruct and maintain an entry feature(s) and other improvements. The easement shall run with the land and shall be binding on all future Owners of Lots encumbered by the Entrance Feature Area except as hereinafter set forth.

## X. MISCELLANEOUS

A. Term. These Restrictions shall bind and run with the land for a term of 30 years from and after the date that these Restrictions are filed for recording with the Recorder of Licking County, Ohio and thereafter shall automatically renew forever for successive periods of ten (10) years each, unless earlier terminated by the vote of a majority of all of the Members, at a meeting scheduled and conducted for that purpose.

B. Enforcement. These Restrictions may be enforced by any proceeding at law or in equity by the Grantor, any member of Grantor, any Owner, the Association, the Design Review Board, and each of their respective heirs, successors and assigns, against any person(s) violating, or attempting to violate, any covenant, restriction, or rule to restrain and/or to enjoin violation, to obtain a decree for specific performance as to removal of any nonconforming Improvement, and to recover all damages, costs of enforcement and any other costs incurred (including without limitation reasonable attorneys' fees) in connection with any violation. The failure or forbearance to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of these rights.

C. Amendments. Until the Turnover Date, Grantor may, in its sole and absolute discretion, unilaterally amend these Restrictions at any time and from time to time, without the consent of any other Owners. Any such amendment may impose covenants, conditions, restrictions and easements upon the Property in addition to those set forth herein including, without limitation, restrictions on use and covenants to pay additional charges with respect to the maintenance and improvement of the Property. After the Turnover Date, Grantor may unilaterally amend these Restrictions, without the consent of any other Owners, if such amendment is: (1) necessary to bring any provision hereof into compliance with any applicable governmental statute, rule, regulation or judicial order; (2) necessary to enable any reputable title insurance company to issue title insurance coverage on the Lots; (3) necessary to conform to the requirements of United States Federal Housing Administration, or (4) necessary to correct errors; provided, however, any such amendment shall not materially adversely affect the title to any Lot unless the Owner thereof has consented to such amendment in writing. No amendment may remove, revoke, or modify any right or privilege of

Grantor without the written consent of Grantor or the assignee of such right or privilege. Grantor shall have the right and power, but neither the duty nor the obligation, in its sole and absolute discretion and by its sole act, to subject additional property to these Restrictions at any time and from time to time by executing and recording in the appropriate governmental office an amendment to these Restrictions specifying that such additional property is part of the Property. An amendment to these Restrictions made by Grantor shall not require the joinder or consent of the Association, other Owners, mortgagees or any other person. In addition, such amendments to the Declaration may contain such supplementary, additional, different, new, varied, revised or amended provisions and memberships as may be necessary or appropriate, as determined by Grantor, to reflect and address the different character or intended development of any such additional property.

In addition, these Restrictions may be amended or modified after the Turnover Date with the approval of Owners holding not less than two-thirds (2/3) of the voting power of all Owners in the Association, provided that the consent of all Owners shall be required for any amendment which effects a change in the voting power of any Owner, the method of allocating Common Expenses among Owners, or the fundamental purpose for which the Association is organized. Any amendment to these Restrictions adopted with the aforesaid consent shall be executed with the same formalities as to execution as observed in these Restrictions by the president and the secretary of the Association, and shall contain their certifications that the amendment was duly adopted in accordance with the requirements of this paragraph. Any amendment so adopted and executed shall be effective upon the filing of the same with the Recorder of Licking County, Ohio.

D. Grantor's Rights to Complete Development. Grantor, and the members of Grantor, shall have the right to: (1) complete the development, construction, promotion, marketing, sale, resale and leasing of properties; (2) construct or alter Improvements on any property owned by Grantor; (3) construct and maintain model homes, offices for construction, sales or leasing purposes, storage areas, construction yards or similar facilities on any property owned by Grantor or the Association; or (4) post signs incidental to the development, construction, promotion, marketing, sale and leasing of property within the Property. Further, Grantor shall have the right of ingress and egress through the streets, paths and walkways located in the Property for any purpose whatsoever, including, but not limited to, purposes related to the construction, maintenance and operation of Improvements. Nothing contained in these Restrictions shall limit the rights of Grantor or require Grantor to obtain approval to: excavate, cut, fill or grade any property owned by Grantor or to construct, alter, remodel, demolish or replace any Improvements on any Common Property or any property owned by Grantor as a construction office, model home or real estate sales or leasing office in connection with the sale of any property; or require Grantor to seek or obtain the approval of the Association or the Design Review Board for any such activity or Improvement on any

Common Property or any property owned by Grantor. Nothing in this section shall limit or impair the reserved rights of Grantor as elsewhere provided in these Restrictions.

E. Mortgagee Rights. A holder or insurer of a first mortgage upon any Lot, upon written request to the Association (which request shall state the name and address of such holder or insurer and a description of the Lot) shall be entitled to timely written notice of:

1. Any proposed amendment of these Restrictions;
2. Any proposed termination of the Association; and
3. Any default under these Restrictions which gives rise to a cause of action by the Association against the Owner of the Lot subject to the mortgage of such holder or insurer, where the default has not been cured in sixty (60) days.

Each holder and insurer of a first mortgage on any Lot shall be entitled, upon written request and at such mortgagee's expense, to inspect the books and records of the Association during normal business hours.

F. Indemnification. The Association shall indemnify every officer and trustee of the Association against any and all claims, liabilities, expenses, including attorneys' fees, reasonably incurred by or imposed upon any officer or trustee in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the Board) to which he/she may be a party by reason of being or having been an officer or trustee. The officers and trustees shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misconduct, bad faith or gross negligence. The officers and trustees of the Association shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that such officers or trustees may also be Members of the Association), and the Association shall indemnify and forever hold each such officer and trustee free from and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided herein shall not be exclusive of any other rights to which any officer or trustee, or former officer or trustee, may be entitled.

G. Severability. If any article, section, paragraph, sentence, clause or word in these Restrictions is held by a court of competent jurisdiction to be in conflict with any law, or unenforceable, then the requirements of such law shall prevail and the conflicting provision or language shall be deemed void in such circumstance; provided that the remaining provisions or language of these Restrictions shall continue in full force and effect.

H. Enforcement; Waiver. Failure of the Grantor, any member of Grantor, the Association or any Owner to enforce any provision of these Restrictions or the Rules in any manner shall not constitute a waiver of any right to enforce any violation of such provision. By accepting a deed to a Lot, each Owner is deemed to waive the defenses of laches and statute of limitations in connection with the enforcement by the Association of these Restrictions or the Rules.

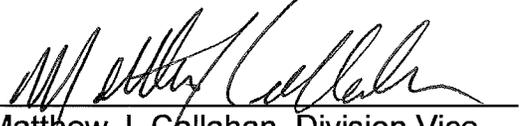
I. Captions. The caption of each article, section and paragraph of these Restrictions is inserted only as a matter of reference and does not define, limit or describe the scope or intent of the provisions of these Restrictions.

J. Notices. Notices to an Owner shall be given in writing, by personal delivery, at the Lot, if a residence has been constructed on such Lot, or by depositing such notice in the United States Mail, first class, postage prepaid, to the address of the Owner of the Lot as shown by the records of the Association, or as otherwise designated in writing by the Owner.

*[Remainder of page intentionally left blank.]*

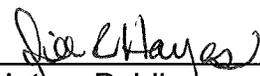
**IN WITNESS WHEREOF**, the Grantor has caused the execution of these Restrictions as of the date first above written.

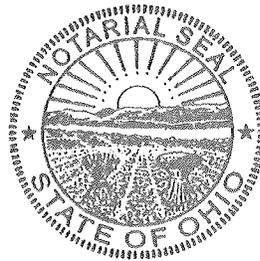
PULTE HOMES OF OHIO LLC,  
a Michigan limited liability company

By:   
Matthew J. Callahan, Division Vice  
President Land Acquisition

STATE OF OHIO,  
COUNTY OF FRANKLIN, SS:

The foregoing instrument was executed and acknowledged before me this 10<sup>th</sup> day of March, 2016, by Matthew J. Callahan, Division Vice President Land Acquisition of Pulte Homes of Ohio LLC, a Michigan limited liability company, on behalf of the company.

  
Notary Public



Jill R. Hayes  
Notary Public, State of Ohio  
My Commission Expires 12-07-2020

This Instrument Prepared By:

David G. Gentry, Esq.  
Gentry Law Group, LLC  
2000 W. Henderson Rd., Suite 355  
Columbus, Ohio 43220  
(614) 929-5151