WAKE COUNTY, NC 447
LAURA M RIDDICK
REGISTER OF DEEDS
PRESENTED & RECORDED ON
02/27/2013 AT 14:10:41

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Instrument Prepared by:	Justin R. Apple, Esq. Hatch, Little & Bunn, LLP.
Brief Description for Index:	BM2006, Pages 251-260 BM2006, Pages 1182-1191
Parcel Identifier:	0796526716
Mail After Recording To:	Zayda Esquivel City of Raleigh Stormwater Division, Room 301 222 West Hargett Street Raleigh, North Carolina 27601

STATE OF NORTH CAROLINA

COUNTY OF WAKE

FIRST AMENDMENT TO STORMWATER REPLACEMENT AGREEMENT

THIS FIRST AMENDMENT TO THE STORMWATER REPLACEMENT AGREEMENT (this "AMENDMENT") is made this _____ day of _____, 201_, by and between **Pulte Home Corporation**, whose address and telephone number are 1125 Crescent Green Drive, Suite 118, Cary, North Carolina 27518, (919) 816-1100] (hereinafter referred to as "Developer"), and The Townes at Crabtree Homeowners Association, Inc., a North Carolina non-profit corporation, whose address and telephone number are [c/o Professional Properties Management of Raleigh, Inc. 6739 Falls of the Neuse Road, Raleigh, North Carolina 27615, (919)848-4911] (hereinafter referred to as the "Association" and, together with Developer, "Grantors"), with, to and for the benefit of the **CITY OF RALEIGH**, a municipal corporation of the State of North Carolina, whose address is P.O. Box 590, Raleigh, North Carolina 27602 (hereinafter referred as to the "Grantee" or the "City"). These parties shall hereinafter sometimes be referred to collectively as the "Parties", and individually as a "Party".

RECITALS

WHEREAS, the Parties have previously entered into an agreement, recorded in Book 11820 Pages 1037-1056 of the Wake County Registry, as may be amended from time to time (collectively, the "Stormwater Replacement Agreement"). Capitalized terms within this Amendment that are not defined within the body text of this Amendment shall bear the same meaning as defined in the Stormwater Replacement Agreement;

WHEREAS, the Stormwater Replacement Agreement has

[X] not been previously amended.

WHEREAS, the period of developer (declaration) control of the Association, as set forth the governing documents of the Association, has

[ ] not terminated.

[X] terminated

WHEREAS, the Raleigh City Council has enacted Ordinance No (2010) – 791 TC 337 which amends the requirements for existing stormwater replacement agreements required by the City. Said ordinance eliminates the existing privately-funded general replacement account and, in lieu thereof, substitutes a developer-funded replacement fund and a system of special assessments in the manner of Article 10 Chapter 160A of the North Carolina General Statutes, all in accordance with North Carolina Session Law 2009-293 and Ordinance No (2010) – 791 TC 337 and private assessments.

WHEREAS, the Parties wish to amend the Stormwater Replacement Agreement to conform to recent changes in State and City laws.

NOW, THEREFORE, for a valuable consideration, including the benefits Grantors may derive therefrom, the receipt of which is hereby acknowledged, the Parties hereby agree as follows:

1. RECITALS. The foregoing recitals shall constitute an integral part of this Amendment and are therefore incorporated herein and made a part hereof.

2. AMENDMENTS TO STORMWATER REPLACEMENT AGREEMENT.

   (a) **Section Four** of the Stormwater Replacement Agreement (relating to General Replacement Fund) is hereby deleted in its entirety, and said section is reserved for future use.

   (b) The first sentence of the first paragraph of **Section Six** of the Stormwater Replacement Agreement (relating to Default) is hereby amended to delete all language following the language, "The City, in its sole discretion, may perform

such work" and in lieu of the deleted language, the following is substituted: "and recover the cost therefrom (i) the Party who is the then owner of the Stormwater Control Measure or the Stormwater Control Facility, as the case may be, -- the "Owner" or the "Responsible Party," as the case may be, -- or (ii) from the lot owners of portions of the Property served by the Stormwater Control Measures or the Stormwater Control Facilities, as the case may be, subject to the Stormwater Replacement Agreement. However, the City will give the owner of the Stormwater Control Measure or Stormwater Control Facility, as the case may be, timely written notice of and a reasonable opportunity to cure the default hereunder."

(c) The last sentence of **Section 11** of the Stormwater Replacement Agreement (relating to Amendments) is hereby deleted, and rewritten to read as follows: "No amendment to this agreement shall become effective until executed by the appropriate Parties, approved by the City's Director of Public Works and recorded in the office of the local county register of deeds."

(d) Two new exhibits are hereby added to the Stormwater Replacement Agreement:

(i) The first exhibit is proposed reserve fund schedule derived from dividing the initial construction cost of each Stormwater Control Measure or Stormwater Control Facility, as the case may e, by the expected life of that measure or facility. The intent of this exhibit is to provide guidance to the Association as to the amount of money that would be needed to establish a reserve fund for major repairs and/or replacement of the Stormwater Control Measure(s) and Stormwater Control Facilit(ies), as the case may be. The Association is strongly urged to establish and maintain a reserve fund so that the Association has monies available to it to have the work done by its contractors, or, if the City performs the work, to reimburse the City for the costs thereof, and, either event, thereby avoid future City assessments against the lots for reimbursement of costs incurred by the City. If the City is not reimbursed fully for the costs incurred by the City, the City will assess these costs against the lots as permitted by law.

(ii) The second exhibit is a certified letter prepared under seal by an engineer licensed in the State of North Carolina, listing which recorded lots are served, in whole or in part, by each Stormwater Control measure or Stormwater Control Facility, as the case may be, described in the stormwater operations and maintenance manual and budget and for which estimated construction costs are stated in such manual. The certified letter may be based on the original designs as shown on the City-approved construction drawings and as-built plans presented to the City, and may be, but are not required to be, verified by aerial photos. The purpose of this exhibit is to enable the City to identify which lots may be subject to future assessment.

The two exhibits are attached hereto as Exhibit 1 and Exhibit 2 respectively and made part of this Amendment as if fully set forth herein.

3. AMENDMENTS TO THE STORMWATER OPERATIONS AND MAINTENANCE MANUAL AND BUDGET (attached as an exhibit to either the Stormwater Replacement Agreement or the Declaration of Maintenance Covenant for Stormwater Control Facilities [Maintenance Covenant] for projects recorded after 5 August 2008). This provision modifies the stormwater operations and maintenance manual and budget found within either the Stormwater Replacement Agreement or the Maintenance Covenant as follows:

(a) All provisions relating to major repairs recorded in Book 11820 specific Page 1053, within the Wake County Registry are hereby deleted in their entirety.

(b) All provisions of the budget relating to replacement contribution to the City of Raleigh recorded in Book 11820 specific Page 1053 within the Wake County Registry are hereby deleted in their entirety.

(c) All provisions relating to annual replacement contribution payments paid to the City of Raleigh recorded in Book 11820 specific Pages 1053 through 1055 within the Wake County Registry are hereby deleted in their entirety.

4. Upon presentation to the City of this original recorded Amendment, the City will pay the Association, in accordance with the City's accounting procedures, the sum of $ 13,333.25 said sum being all monies paid into the General Replacement Account for or on behalf of the Association that exceed twenty-four percent (24%) of the estimated initial construction cost of the Stormwater Control Measure or Stormwater Control Facility, as the case may be, as contained in the stormwater operations and maintenance manual and budget. The Developer and the Association and its members each agree, represent and acknowledge that the Association is the only Party entitled to said funds. By and upon the Association's receipt of such reimbursement the Developer and the Association (through the Association, its members) hereby waive and release forever any and all claims, rights and demands of any kind whatsoever, now existing or existing in the future, to any funds paid into the General Replacement Account and any other stormwater replacement account held by the City

5. The Association agrees to indemnify and hold harmless the City, its officers, and employees for any damages, costs, or penalties (including attorneys' fees) associated with any claim made by any person or entity relating to or arising from the payment of the funds to the Association pursuant to the terms of this Amendment. The City has acted in reliance on the representations made by the Association in this instrument that no other person or entity has a right to the funds being paid to the Association by the City, and the Association acknowledges

that these representations and this indemnity provision are a material inducement to the City's payment of these funds to the Association.

6. The Developer hereby represents and warrants that: (i) the Stormwater Control Measures and Stormwater Control Facilities, as the case may be, subject to the Stormwater Replacement Agreement have been conveyed to the Association and, when conveyed, the same were in good working order and were performing as designed; (ii) at the time of its execution of this Amendment, there are no disputes or claims between Developer and the Association concerning the Stormwater Control Measure and Stormwater Control Facilities, as the case may be, that are subject to the Stormwater Replacement Agreement, and that Developer knows of no facts or circumstances which, by the passage of time or otherwise, is likely to result in any such claim or dispute; (iii) as of the date of its execution of this Amendment and as of the date on which the Stormwater Control Measures and Stormwater Control Facilities were conveyed to the Association, and (iv) Developer has not made any assignment for the benefit of any creditor, it was not insolvent or involved in a liquidation or termination of its business, it was not subject to any bankruptcy petition, voluntary or involuntary, nor had it been adjudicated bankrupt.

The Association hereby represents and warrant that: (i) the Stormwater Control Measures and Stormwater Control Facilities, as the case may be, that are subject to the Stormwater Replacement Agreement have been conveyed to the Association and, when conveyed, were in good working order and were performing as designed; (ii) all Stormwater Control Measures and Stormwater Control Facilities, as the case may be, that are subject to the Stormwater Replacement Agreement are currently in good working order and are performing as designed; (iii) at the time of its execution of this Amendment, there are no disputes or claims between the Association and Developer concerning the Stormwater Control Measure and Stormwater Control Facilities, as the case may be, that are subject to the Stormwater Replacement Agreement, and that the Association knows of no facts or circumstances which, by the passage of time or otherwise, will result in any such claim or dispute; and (iv) the Association has not made any assignment for the benefit of its creditor, it is not insolvent or involved in a liquidation or termination of its business, it is not subject to any bankruptcy petition, voluntary or involuntary, nor has it been adjudicated bankrupt.

7. Except as modified and amended by this Amendment, all terms and conditions of the Stormwater Replacement Agreement, as may be previously amended, shall remain in full force and effect.

8. Each person signing this Amendment certifies that he/she is properly authorized to sign this Amendment on behalf of the entity and to bind the entity to the provisions hereof, and that all applicable covenants, conditions, bylaws and requirements of the entity have been met.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the Parties hereto have each executed and sealed this Amendment to Stormwater Replacement Agreement as its binding legal act and deed; as of the day and year first above.

THE PERSON SIGNING ON BEHALF OF THE ASSOCIATION AND DEVELOPER SPECIFICALLY ACKNOWLEDGES THE CERTIFICATION MADE IN PARAGRAPH 8 OF THIS AMENDMENT.

ASSOCIATION:

The Townes at Crabtree Homeowners Association, Inc.

By: _____ (SEAL)
Rodney-Daryl Jones
President, The Townes at Crabtree Homeowners Association, Inc.

DEVELOPER:

Pulte Home Corporation

By: _____ (SEAL)
Name: Chris Rayghley
Title: Vice President, Land Development

CITY OF RALEIGH

By: _____ (SEAL)
J. Russell Allen
City Manager, City of Raleigh

Attest: _____
City Clerk

CITY OF RALEIGH NORTH CAROLINA

Rodney-Daryl
RODNEY-DARYL JONES

STATE OF NORTH CAROLINA

COUNTY OF WAKE

ASSOCIATION
ACKNOWLEDGMENT

I, certify that the following person personally appeared before me this day and acknowledged to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: Mr. Rodney-Daryl Jones.

This the 13 day of August, 2012.

[Notary Seal]

Notary Public
Print Name: Richard Kremp
My Commission Expires: 05/01/2016

RICHARD KREMP
NOTARY PUBLIC
WAKE COUNTY
NORTH CAROLINA
MY COMMISSION EXPIRES MAY 1, 2016

STATE OF NORTH CAROLINA

COUNTY OF WAKE

DEVELOPER
ACKNOWLEDGMENT

I, certify that the following person personally appeared before me this day and acknowledged to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: Chris Raughley.

This the 2nd day of ~~June~~ July, 2012.

[Notary Seal]

GINGER W. DOUGLAS
NOTARY
PUBLIC
WAKE COUNTY, NC

Notary Public
Print Name: Ginger W. Douglas
My Commission Expires: 9-30-2013

STATE OF NORTH CAROLINA

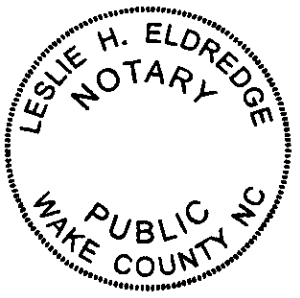
COUNTY OF WAKE

CITY MANAGER
ACKNOWLEDGMENT

This is to certify that on the 25 day of FEBRUARY, 2013, before me personally came GAIL G. SMITH, with whom I am personally acquainted, who, being by me duly sworn, says that she is the City Clerk and Treasurer and J. Russell Allen is the City Manager of the City of Raleigh, the municipal corporation described in and which executed the foregoing; that she knows the corporate seal of said municipal corporation; that the seal affixed to the foregoing instrument is said corporate seal, and the name of the municipal corporation was subscribed thereto by the said City Clerk and treasurer and that the said corporate seal was affixed, all by order of the governing body of said municipal corporation, and that the said instrument is the act and deed of said municipal corporation.

WITNESS my hand and official seal this the 25 day of FEBRUARY, 2013.

(SEAL)



Leslie H. Eldredge
Notary Public

My Commission expires: NOV. 11, 2013

LIST OF EXHIBITS

1. Exhibit 1 — Proposed Reserve Fund Schedule

2. Exhibit 2 — A listing, certified and sealed by an engineer licensed in North Carolina, showing which recorded lots are served by each Stormwater Control Measure or Stormwater Control Facility, as the case may be, described in the stormwater operations and maintenance manual and budget for which estimated initial construction costs are stated in the manual.

ATTORNEY CERTIFICATION

I, Justin R. Apple, an attorney licensed to practice law in the State of North Carolina, certify to the City of Raleigh that this Amendment has been prepared in accordance with the instructions provided by the City of Raleigh, and that I have investigated the county land records necessary to prepare this instrument.

Attorney at Law

NC BAR #: 42653

G2 DESIGN
STORMWATER SERVICES
G2 DESIGN, P.A.
P.O. BOX 297
APEX, NORTH CAROLINA
27502-0297
P: 919.321.0638
F: 919.321.8311

EXHIBIT 1

PROPOSED RESERVE FUND SCHEDULE

Total Construction Cost of the Stormwater Facility pursuant to the Stormwater Operations and Maintenance Manual and Budget prepared for the stormwater control measure serving the Townes at Crabtree Subdivision dated December 12, 2005 and recorded in Book 11820, Page 1053, Wake County Register of Deeds was $24,950.00, with a useful life of 30 years. Therefore the proposed Reserve Fund Schedule would consist of contributions of $831.65 per year for the first 29 years beginning in 2005 and ending in 2034, and a final contribution of $832.15 in year 2035 with a total reserve in 2035 of $24,950.00.

G2 DESIGN
STORMWATER SERVICES
G2 DESIGN, P.A.
P.O. Box 297
APEX, NORTH CAROLINA
27502-0297

P: 919.321.0638
F: 919.321.8311

EXHIBIT 2

June 18, 2012

Townes at Crabtree HOA
Attn: Ms. Crystal Whittenton, PCAM
c/o Professional Property Management of Raleigh, Inc.
P.O. Box 99657
Raleigh, NC 27624

Re: Stormwater Control Facility and Recorded Lot Allocation Summary for:
"Townes at Crabtree", City of Raleigh TN File # N-0071-05

Dear Ms. Whittenton,

Please find below the Stormwater Control Facility and corresponding lot allocation for the wet detention pond stormwater BMP serving the Townes at Crabtree, City of Raleigh TN File # N-0071-05. This summary is required by the City of Raleigh as an exhibit to the amended stormwater agreement for the Stormwater Control Replacement Account Reimbursement process.

Stormwater Control Facility: Wet Detention Pond
Lot Numbers Served by Stormwater Control Facility: Lots 4-88 & 100-128, as shown on "The Townes at Crabtree" Subdivision Plat, Book of Maps 2006, 251-260.

This information is based on review of the grading plan prepared by ETD for The Townes at Crabtree, dated February 2, 2005, site verification of watershed drainage patterns, and information obtained from the recorded subdivision plat on file at the Wake County Register of Deeds.

Very truly yours,
G2 Design, P.A.

By:

Timothy P. Grady
President

NORTH CAROLINA REGISTERED LANDSCAPE ARCHITECT 1015 TIMOTHY P. GRADY

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Yellow probate sheet is a vital part of your recorded document.
Please retain with original document and submit for rerecording.

Wake County Register of Deeds
Laura M. Riddick
Register of Deeds

This Customer Group
_____ # of Time Stamps Needed

This Document
_____ New Time Stamp
13 # of Pages

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