

****AMENDED****

**NOTICE OF REGULAR MEETING
COMMON COUNCIL OF THE CITY OF COOLIDGE
MONDAY, JUNE 13, 2011 - 7:00 P.M.
COUNCIL CHAMBERS – 911 S. ARIZONA BOULEVARD
PINAL COUNTY, COOLIDGE, ARIZONA**

Members of the City of Coolidge City Council will attend either in person or by telephone conference call or video communication.

CALL TO ORDER:

1. Pledge of Allegiance
2. Roll Call

PRESENTATIONS:

3. Proclamation – “Play Day” in the City of Coolidge.
4. Monthly report and “Business Spotlight Member” recognitions by the Coolidge Chamber of Commerce.

CALL TO THE PUBLIC

THE PROCEDURES TO FOLLOW IF YOU ADDRESS THE COUNCIL ARE: COUNCIL REQUESTS THAT YOU EXPRESS YOUR IDEAS IN FIVE MINUTES OR LESS AND REFRAIN FROM ANY PERSONAL ATTACKS OR DEROGATORY STATEMENTS ABOUT ANY CITY EMPLOYEE, A FELLOW CITIZEN, OR ANYONE ELSE WHETHER IN THE AUDIENCE OR NOT. THE MAYOR WILL LIMIT DISCUSSION WHENEVER HE DEEMS SUCH AN ACTION APPROPRIATE TO THE PROPER CONDUCT OF THE MEETING. AT THE CONCLUSION OF AN OPEN CALL TO THE PUBLIC, INDIVIDUAL MEMBERS OF THE COUNCIL MAY RESPOND TO CRITICISM MADE BY THOSE WHO HAVE ADDRESSED THE COUNCIL, MAY ASK STAFF TO REVIEW A MATTER OR MAY ASK THAT A MATTER BE PUT ON A FUTURE AGENDA. HOWEVER, MEMBERS OF THE COUNCIL SHALL NOT DISCUSS OR TAKE LEGAL ACTION ON ANY MATTERS DURING AN OPEN CALL TO THE PUBLIC UNLESS THE MATTERS ARE PROPERLY NOTICED FOR DISCUSSION AND LEGAL ACTION.

BUSINESS:

CONSENT AGENDA - ALL CONSENT ITEMS WERE REVIEWED INDIVIDUALLY. ALL CONSENT AGENDA ITEMS MAY BE ENACTED BY ONE MOTION AND APPROVED. ANY ITEM MAY BE REMOVED FROM THE CONSENT AGENDA AND CONSIDERED SEPARATELY IF A MEMBER OF THE COUNCIL SO REQUESTS. CONSENT ITEMS ARE MARKED WITH AN ASTERISK (*).

5. * Consider approval of appointing Lisa Pannella/Finance Director as Chief Fiscal Officer for FY 11/12. **Discussion and action.**
6. ***Resolution No. 11-17;** A Resolution of the Mayor and City Council of the City of Coolidge, Pinal County, Arizona, adopting a policy and prescribing procedures for purchasing from the Mayor and any member of the Council. **Discussion and action.**

7. * Consider approval of an Agreement for Professional Services between the City of Coolidge and Fitzgibbons Law Offices P.L.C. for the purpose of providing legal services to the City, through June 30, 2012. **Discussion and action.**
8. * Consider approval of an Agreement between the City of Coolidge and Mr. Michael F. Beers for the purpose of providing public defender services for the City's Municipal Court, through June 30, 2012. **Discussion and action.**
9. * Consider approval of entering into a Lease Agreement between the City of Coolidge and Catholic Community Services of Southern Arizona to lease the city-owned premises located at 250 S. Third Street, known as the Adult Center, through June 30, 2012. **Discussion and action.**
10. **Ordinance No. 11-04;** An Ordinance of the City of Coolidge setting its 2011-2012 Expenditure Limit and approving and adopting the 2011-2012 Tentative Budget for Fiscal Year 2011-2012 and declaring an emergency. **Discussion and action.**
11. Consider approval of Liquor License Application #12113199 submitted by Mr. Joseph Anthony Turley for Adobe Joe's Steak & BBQ located at 235 W. Coolidge Avenue, Coolidge, Arizona. **Discussion and action.**
12. **Resolution No. 11-18;** A Resolution of the Mayor and City Council of the City of Coolidge, Arizona, approving the installation of "No Parking" signs on Industrial Drive and designating those portions of Industrial Drive as restricted parking areas; pursuant to Section 14-3-3 of the City of Coolidge City Code and in accordance with the 2009 MUTCD Edition Section 2B.47 – Design of Parking Standing and Stopping Signs. **Discussion and action.**
13. Consider approval of lifting the hiring freeze to fill two (2) vacant Police Officer positions in the Police Department, which are fully funded in FY 10/11. **Discussion and action.**
14. Consider approval of entering into an Intergovernmental Agreement between the City of Coolidge and the Town of Florence, Pinal County; and Central Arizona College for the Regional Transit Program (Pinal Central Express). **Discussion and action.**
15. Consider approval of lifting the hiring freeze to fill two (2) vacant Transit Driver/Dispatcher positions in the Transit Department for the Pinal Central Express Route. **Discussion and action.**
16. **Resolution No. 11-19;** A Resolution of the Mayor and City Council of the City of Coolidge, Arizona, certifying that the area known as "Original Townsite" is a Colonia as defined by the Housing and Community Development Act of 1974, Section 916, as amended, and authorizing the City to submit an application for CDBG Funds to be used to address the identified needs of the Colonia. **Discussion and action.**

17. Consider approval of a request for a land split submitted by Mr. Kenneth Brown to divide the property located at 1751 S. Arizona Boulevard, Coolidge, Arizona, APN 205-17-055 to support the proposed Dollar General Project. **Discussion and action.**
18. **Resolution No. 11-20;** A Resolution of the Mayor and City Council of the City of Coolidge, Arizona, abandoning, without compensation, a portion of the alley located in a portion of the southwest quarter of the southwest quarter of Section 27, Township 5 South, Range 8 East, of the Gila and Salt River Base and Meridian and abutting the properties legally described as Lots 1, 2, 3, and 4, Block 1, of McIntyre Second Subdivision, according to the plat recorded in Book 5 of Maps, Page 31, in the Office of the Pinal County Recorder, Pinal County, Arizona. **Discussion and action.**
19. **Ordinance No. 11-05;** An Ordinance of the Mayor and City Council of the City of Coolidge, Arizona, rezoning certain parcels of land from their current designation of R-3 Multi-Family Residential and C-3 General Services Zoning Classifications to C-2 General Business Zoning Classification consisting of approximately 3.1 acres, more or less. The parcels of land are legally described as parcel numbers 205-18-0010, 205-18-0020, 205-18-004C and 205-17-0550, general located just east of Arizona Boulevard and just north of Taylor Avenue in a portion of the southwest quarter of Section 27 of Township 5 South, Range 8 East of the Gila and Salt River Base and Meridian, Pinal County, Arizona. **Discussion and action.**
20. **Resolution No. 11-21;** A Resolution of the Mayor and City Council of the City of Coolidge, Arizona, approving and adopting the Amendment to Pre-Annexation and Development Agreement between the City of Coolidge and Specialty Trust, Inc., a Maryland Corporation, successor-in-interest to Suggs Homes, Inc., an Arizona Corporation in compliance with A.R.S. §9-500-05. **Discussion and action.**
21. Consider award of bid to Pavex Corporation in the amount of \$114,333 to install and construct the Automated Weather Observation System (AWOS) at the Coolidge Municipal Airport, subject to FAA and ADOT approval. **Discussion and action.**
22. **Resolution No. 11-22;** A Resolution of the Mayor and City Council of the City of Coolidge, Arizona, approving and adopting the First Amendment to Pre-Annexation and Development Agreement between the City of Coolidge and Pulte Home Corporation, a Michigan Corporation, and MV Coolidge, LLC, an Arizona Limited Liability Company in compliance with A.R.S. §9-500-05. **Discussion and action.**
23. Consider approval of entering into an Agreement between the City of Coolidge and Pulte Home Corporation for the purpose of securing that MV Coolidge LLC make all continuing payments on the Fire Operating Deficit for the next three additional fiscal years, including those years ending June 30, 2011, June 30, 2012, and June 30, 2013. **Discussion and action.**

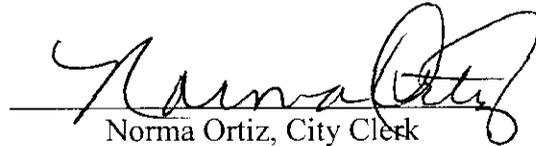
24. Consider approval of the claims for the month of May, 2011. **Discussion and action.**

REPORT FROM THE MAYOR-COUNCIL AND/OR CITY MANAGER

ADJOURNMENT

THIS NOTICE IS POSTED IN ACCORDANCE WITH THE CITY CODE 2-4-1 OF THE CITY OF COOLIDGE AND A.R.S. §38-431, ET SEQ. ALL MEMBERS OF THE PUBLIC ARE INVITED TO ATTEND THIS MEETING.

DATED this 8th day of June, 2011


Norma Ortiz, City Clerk

PERSONS WITH DISABILITIES NEEDING REASONABLE ACCOMMODATIONS, INCLUDING LARGE PRINT MATERIALS OR INTERPRETERS, SHOULD CONTACT THE ADA COORDINATOR AT (520) 723-5361 OR TDD LINE (520) 723-4653 NO LATER THAN 10:00 A.M. JUNE 13, 2011.

NOTICE TO PARENTS: Parents and legal guardians have the right to consent before the City of Coolidge makes a video or voice recording of a minor child. A.R.S. §1-602.A.9. Coolidge Council Meetings are recorded and may be viewed on Channel 11 and the Coolidge website. If you permit your child to participate in the Council Meeting, a recording will be made. If your child is seated in the audience your child may be recorded, but you may request that your child be seated in a designated area to avoid recording. Please submit your request to the City Clerk at (520)723-5361, Ext. #6009.

The Agenda and all supporting documents and materials pertaining to this Agenda together with Staff and Department Reports are available for viewing in City Hall and the Library during normal business hours.

POST: 6-9-11

TIME: 4:00 p.m.

RESOLUTION No. 11-21

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF COOLIDGE, ARIZONA, APPROVING AND ADOPTING THE AMENDMENT TO PRE-ANNEXATION AND DEVELOPMENT AGREEMENT BETWEEN THE CITY OF COOLIDGE AND SPECIALTY TRUST, INC., A MARYLAND CORPORATION, SUCCESSOR-IN-INTEREST TO SUGGS HOMES, INC., AN ARIZONA CORPORATION IN COMPLIANCE WITH A.R.S. §9-500.05.

WHEREAS, pursuant to A.R.S. §9-500.05, the City of Coolidge and Suggs Homes, Inc., an Arizona corporation, entered into that certain Pre-Annexation and Development Agreement recorded on November 6, 2000 at Fee No. 2000-046329 in the Official Records of Pinal County Recorder (the "Original Agreement").

WHEREAS, the City of Coolidge believes that it is in the best interest of the City to amend the Original Agreement and enter into this Amendment to Pre-Annexation and Development Agreement.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and City Council of the City of Coolidge, Arizona, as follows:

Section 1. The City of Coolidge by the requisite vote of its City Council hereby approves and adopts, and authorizes and instructs its Mayor on behalf of the City of Coolidge to enter into the Amendment to Pre-Annexation and Development Agreement with Specialty Trust, Inc., a Maryland corporation, successor-in interest to Suggs Homes, Inc., an Arizona corporation, in the form attached to and made a part of this Resolution.

Section 2. Pursuant to A.R.S. §9-500.05(G), the provisions of this Resolution are not enacted as an emergency measure and shall not be effective for thirty (30) days.

PASSED AND ADOPTED by the Mayor and City Council of the City of Coolidge, Arizona, this 13th day of June, 2011.

APPROVED:

Mayor

ATTEST:

APPROVED AS TO FORM:

City Clerk

City Attorney

WHEN RECORDED, RETURN TO:

City Clerk
City of Coolidge
130 W. Central Avenue
Coolidge, Arizona 85128

AMENDMENT TO PRE-ANNEXATION AND DEVELOPMENT AGREEMENT

This Amendment dated this _____ day of June, 2011 (“Amendment”) to the Pre-Annexation and Development Agreement dated October 26, 2000 by and between the CITY OF COOLIDGE, an Arizona municipal corporation (the “City”) and SPECIALTY TRUST, INC., a Maryland corporation (“Specialty Trust”), successor-in-interest to SUGGS HOMES, INC., an Arizona corporation (“Suggs Homes”). Specialty Trust is hereinafter referred to as the “Developer”.

RECITALS

A. On or about October 26, 2000, the City entered into a Pre-Annexation and Development Agreement (“Agreement”) with Suggs Homes covering approximately 214 acres, more or less, more specifically described in Exhibit A attached hereto and made a part hereof (the “Property”), of which approximately 67.4 acres were located within the City (“City Property”) and approximately 149.5 acres were located in the County of Pinal (“County Property”).

B. Among its terms, the Agreement called for the annexation of the County Property and on November 13, 2000, the City Council of the City approved Ordinance No. 00-19 annexing the County Property into the City.

C. On November 27, 2000, pursuant to Ordinance No. 00-20, the City reaffirmed the rezoning of the Property to Planned Area Development.

D. Subsequently, Specialty Trust acquired the Property and requested that the City Council extend the terms of the Agreement, which the City Council agreed to do on January 10, 2011, subject to the negotiation of this Amendment by the City's staff.

AGREEMENT

NOW, THEREFORE, the City and Developer agree to amend the Agreement as follows:

1. Capitalized Terms. All capitalized terms not otherwise defined herein shall have the same meaning as in the Agreement.

2. Application of the Agreement. As annexation of the County Property has occurred, the Agreement as amended by this Amendment and the PAD are operative as to the entire Property.

3. Term. Notwithstanding anything to the contrary contained in the Agreement, the parties acknowledge that the term of the Agreement shall be extended until January 31, 2021. Thus, the phrase "within ten (10) years of annexation of the County Property into the corporate limits of the City" in Section 1.1(b) is hereby deleted and the phrase "by January 31, 2021" inserted and the phrase "until the date ten (10) years from the date of this Agreement" in Section

1.3(a) is hereby deleted and the phrase “until January 31, 2021” is inserted and the phrase “ten (10) years from the date of this Agreement” in Section 1.4 is hereby deleted and the phrase “until January 31, 2021” is hereby inserted.

4. Fire Station Payments. The following provisions are added as Section 2.13 to the Agreement:

2.13 Fire Station Payments.

(a) The Property requires fire service to be provided by the a fire station (the "Serving Fire Station"). City and Developer agree that the initial Developer's fee for fire service from the Serving Fire Station for the Property shall be Twenty Five Thousand Six Hundred Eighty and no/100 Dollars (\$25,680.00) payable for the first year as follows: Twelve Thousand Eight Hundred Forty and no/100 Dollars (\$12,840.00) on receipt of the grading permit for the Property; and Twelve Thousand Eight Hundred Forty and no/100 Dollars (\$12,840.00) payable on the six month anniversary date of the issuance of the first grading permit for the Property.

(b) Beginning on the one (1) year anniversary date of the issuance of the first residential building permit for the Property, the City and Developer agree the Developer's payment for service from the Serving Fire Station shall be calculated and paid on the basis of Two Hundred Forty and no/100 Dollars (\$240.00) per gross acre of the Property (the "Fire Service Payment"). The Fire Service Payment for the Property shall be paid annually in two (2) equal installments on the anniversary date of the issuance of the first residential building permit for the Property and six (6) months thereafter. The Property's Fire Service Payment may be allocated to residential development projects on the Property ("Project") on a per gross acre basis and thereafter the residential homebuilder for the Project shall be liable to pay (on the same basis and at the same times as set forth above) the Project's pro rata share of the Fire Service Payment. A Project's obligation to pay the Fire Service Payment shall be reduced as set forth hereafter:

(i) Upon the issuance by the City of certificates of occupancy for 35% of the Total Lot Count (as defined hereafter) for the Property, the amount of each semi-annual installment

payment of the Fire Service Payment for that Property, shall be reduced by 30%; and

(ii) Upon the issuance by the City of certificates of occupancy for 50% of the Total Lot Count for the Property, the amount of each semi-annual installment payment of the Fire Service Payment for that Property, shall be reduced by 45%; and

(iii) Upon the issuance by the City of certificates of occupancy for 80% of the Total Lot Count for the Property, the amount of each semi-annual installment payment of the Fire Service Payment for that Property, shall be reduced by 75%; and

(iv) Upon the issuance by the City of certificates of occupancy for 90% of the Total Lot Count for the Property, the Developer or the owner of the Property, as applicable, shall be released from its obligation to pay any Fire Service Payment set forth in this Amendment.

(v) "Total Lot Count" shall mean, with respect to the Property, the total number of residential lots established for the Property as set forth in any approved amendment to the PAD Plan or approved plat, provided however, such total may be reduced to the number of lots shown on an approved plat if such number is less than the number of lots shown in the previously approved PAD Plan.

(vi) In no event shall Developer's Fire Service Payment in any one year exceed \$55,000.

(vii) Failure by the Developer of the Property to promptly pay the amount owed pursuant to this Section 2.13, will constitute a breach of this Amendment and the City may collect such amounts owing by utilizing the remedies set forth in Section 3.3 of the Agreement, and further may withhold the issuance of building permits for improvements on the Property until such amount is paid.

5. Developer Representative. The parties acknowledge that the "Developer Representative" shall be that person whom the Developer designates to the City by written notice in accordance with Section 4.1 of the Agreement.

6. Specialty Trust as Successor to Suggs Homes, Inc. The City recognizes and acknowledges that Specialty Trust, Inc. and its successors and assigns have succeeded to the rights and obligations of Suggs Homes, Inc. as Developer under the Agreement.

7. Notices. All Notices to Developer are to go to Specialty Trust, Inc., 6160 Plumas Street, Reno, Nevada 89059, Attention: President, with a copy to Beus Gilbert PLLC, 4800 North Scottsdale Road, Suite 6000, Scottsdale, Arizona 85251, Attention: Paul E. Gilbert, Esq.

8. General Provisions.

(a) Conflicts. In the event the provisions of this Amendment conflict with the Agreement, the provisions of this Amendment shall govern and shall take precedence over the terms of the Agreement.

(b) Waiver. No delay in exercising any right or remedy shall constitute a waiver thereof, and no waiver by the City or the Developer of the breach of any covenant of this Amendment shall be construed as a waiver of any preceding or succeeding breach of the same or any other covenant or condition of this Amendment.

(c) Counterparts. This Amendment may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The signature pages from one or more counterparts may be removed from such counterparts and such signature pages all attached to a single instrument so that the signatures of all parties may be physically attached to a single document.

(d) Headings. The descriptive headings of the paragraphs of this Amendment are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions hereof.

(e) Exhibits and Recitals. Any exhibit attached hereto and the recitals set forth herein shall be deemed to have been incorporated herein by this reference with the same force and effect as if fully set forth in the body hereof.

(f) Further Acts. Each of the parties hereto shall promptly and expeditiously execute and deliver all such documents and perform all such acts as reasonably necessary, from time to time, to carry out the matters contemplated by this Amendment.

(g) Future Effect.

(i) Time of Essence and Successors. Time is of the essence of this Amendment. All of the provisions hereof shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto pursuant to A.R.S. §9-000.05(D), except as provided below; provided, however, the Developer's rights and obligations may only be assigned to a person or entity that has acquired the Property or a portion thereof and only by a written instrument, recorded in the Official Records of Pinal County, Arizona, whereby Developer expressly assigns such rights and obligations. If Developer desires to make an assignment to a person who is not an affiliate of Developer, then such assignment shall be subject to the approval of the City, such approval to not be unreasonably withheld or delayed. Upon Assignment, Developer's assign(s) shall be responsible for its direct and pro-rata share of all sums expended pursuant hereto and City hereby releases Developer from all obligations contained herein, monetary or otherwise.

(ii) Termination Upon Sale to Public. This Amendment shall not impose any obligations upon and shall terminate without the execution or recordation of any further document or instrument as to any lot which has been finally subdivided and sold with a completed home thereon for which a certificate of occupancy or equivalent has been issued and thereupon such lot shall be released from and no longer be subject to or burdened by the provisions of this Amendment.

(h) Entire Agreement. This Amendment constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof. All prior and contemporaneous agreements, representations and understandings of the parties, oral or written, are hereby superseded and merged herein.

(i) Authority. Each of the parties represents and warrants to the other that the individual(s) executing this Amendment on behalf of the respective parties are authorized and empowered to bind the party on whose behalf each such individual is signing.

(j) Severability. If any provision of this Amendment is declared void or unenforceable, such provision shall be severed from this Amendment, which shall otherwise remain in full force and effect. If any applicable law or court of competent jurisdiction prohibits the City or the Developer from undertaking any contractual commitment to perform any act hereunder, this Amendment shall remain in full force and effect, but if the provision requiring such action is deemed material by either party, they shall be entitled to terminate this Amendment. (This provision shall be in addition to any other remedies provided herein and shall not be construed in any way to restrict either party's right to any other remedy provided for herein).

(k) Governing Law; Venue. This Amendment is entered into in Arizona and shall be construed and interpreted under the laws of Arizona. In particular, this Amendment is subject to the provisions of A.R.S. § 38-511. Any action at law or in equity brought by either party for the purpose of enforcing a right or rights provided for in this Amendment shall be tried in a court of competent jurisdiction in Pinal County, Arizona. The parties hereby waive any provisions of law providing for a change of venue in such proceeding to any other county.

(l) Recordation. This Amendment shall be recorded in its entirety in the Official Records of Pinal County, Arizona not later than ten (10) days after this Amendment is executed by the City and the Developer.

(m) No Developer Representations. Nothing contained herein or in the PAD Plan shall be deemed to obligate the City or the Developer to complete any part or all of the development of the Property in accordance with the PAD Plan or any other plan, and the PAD Plan shall not be deemed a representation or warranty by the Developer of any kind whatsoever.

(n) Agreement Remains in Full Force and Effect. Except as amended by this Amendment, the terms of the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Amendment to be effective on the date and at the time a resolution approving this Amendment is approved by the City Council of the City of Coolidge.

CITY:
CITY OF COOLIDGE, an Arizona municipal corporation

By: _____
Name: _____

Date: _____

Attest:

City Clerk

APPROVED AS TO FORM AND AUTHORITY

The foregoing Amendment has been reviewed by the undersigned attorney, who has determined that it is in proper form and within the power and authority granted under the laws of the State of Arizona to the City of Coolidge.

Attorney for City of Coolidge

DEVELOPER:

SPECIALTY TRUST, INC., a Maryland corporation

By: _____

Name: _____

Date: _____

State of Arizona)
) ss.
County of _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2011, by _____, the _____ of the City of Coolidge, an Arizona municipal corporation, on behalf of the City.

Notary Public

My Commission Expires:

State of Arizona)
) ss.
County of _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2011, by _____, the _____ of SPECIALTY TRUST, INC., a Maryland corporation, on behalf of the corporation.

Notary Public

My Commission Expires:

RESOLUTION No. 11-22

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF COOLIDGE, ARIZONA, APPROVING AND ADOPTING THE FIRST AMENDMENT TO PRE-ANNEXATION AND DEVELOPMENT AGREEMENT AND SETTLEMENT AGREEMENT BETWEEN THE CITY OF COOLIDGE AND PULTE HOME CORPORATION, A MICHIGAN CORPORATION, AND MV COOLIDGE, LLC, AN ARIZONA LIMITED LIABILITY COMPANY IN COMPLIANCE WITH A.R.S. §9-500.05.

WHEREAS, pursuant to A.R.S. §9-500.05, the City of Coolidge, an Arizona municipal corporation, Pulte Home Corporation, a Michigan corporation, and Marcus David Martin, a single man, entered into that certain Pre-Annexation and Development Agreement recorded on April 11, 2006 at Fee No. 2006-052216 in the Official Records of Pinal County Recorder (the "Original Agreement").

WHEREAS, the City of Coolidge believes that it is in the best interest of the City to amend the Original Agreement and enter into this First Amendment to Pre-Annexation and Development Agreement and Settlement Agreement.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and City Council of the City of Coolidge, Arizona, as follows:

Section 1. The City of Coolidge by the requisite vote of its City Council hereby approves and adopts, and authorizes and instructs its Mayor on behalf of the City of Coolidge to enter into the First Amendment to Pre-Annexation and Development Agreement and Settlement Agreement with Pulte Home Corporation and MV Coolidge, LLC, in the form attached to and made a part of this Resolution.

Section 2. Pursuant to A.R.S. §9-500.05(G), the provisions of this Resolution are not enacted as an emergency measure and shall not be effective for thirty (30) days.

PASSED AND ADOPTED by the Mayor and City Council of the City of Coolidge, Arizona, this 13th day of June, 2011.

APPROVED:

Mayor

ATTEST:

APPROVED AS TO FORM:

City Clerk

City Attorney

When recorded return to:

City Clerk
City of Coolidge
130 W. Central Avenue
Coolidge, Arizona 85128

**FIRST AMENDMENT TO
PRE-ANNEXATION AND DEVELOPMENT AGREEMENT
AND
SETTLEMENT AGREEMENT**

THIS FIRST AMENDMENT TO PRE-ANNEXATION AND DEVELOPMENT AGREEMENT AND SETTLEMENT AGREEMENT (this "Amendment") is entered into this ___ day of _____, 2011 by and among the CITY OF COOLIDGE, an Arizona municipal corporation ("City") and PULTE HOME CORPORATION, a Michigan corporation ("Pulte"), and MV COOLIDGE, LLC ("MV COOLIDGE") (collectively, "Owner" or "Owners"). The City and Owner shall be referred to individually as the "Party" and collectively as the "Parties."

RECITALS

- A. WHEREAS, the City, Pulte and Marcus David Martin, a single man,¹ were parties to that certain Pre-Annexation and Development Agreement recorded on April 11, 2006 at Fee Number 2006-052216 in the Official Records of the Pinal County Recorder's Office (the "Development Agreement") with respect to approximately 566 acres (2 acres of which have been dedicated to the City for use as a wastewater facility) of real property located in Coolidge, Arizona as legally described and depicted on Exhibit A attached hereto and incorporated herein by this reference (the "Property");
- B. WHEREAS, as of the effective date of the Development Agreement, Pulte had an option to purchase all of the Property from Martin, and has subsequently exercised that option with respect to approximately 342 acres of the Property;
- C. WHEREAS, as of the date of this Amendment, Pulte's option to purchase 220 additional acres of the Property from Martin, who is the current fee title owner of that portion of the Property, has lapsed;
- D. WHEREAS, Pulte and Quantum Capital, L.L.C., an Arizona limited liability company ("QC") entered into that certain Purchase and Sale Agreement dated December 8, 2008

¹ Marcus David Martin, a single man, although a party to the Pre-Annexation and Development Agreement, is not a signatory to this Amendment.

(as amended by that certain First Amendment to Purchase and Sale Agreement dated December 10, 2008, that certain Second Amendment to Purchase and Sale Agreement dated December 12, 2008, that certain Third Amendment to Purchase and Sale Agreement dated December 15, 2008, that Certain Fourth Amendment to Purchase and Sale Agreement dated December 16, 2008, that certain Fifth Amendment to Purchase and Sale Agreement dated October ___, 2010 and as may hereafter be further amended, and collectively referred to as the "Purchase Agreement"). Thereafter, QC transferred and assigned all of its right, title and interest in and to the Purchase Agreement to MV Coolidge;

- E. WHEREAS, Pulte executed a Non-Exclusive Assignment and Assumption of Pre-Annexation and Development Agreement in favor of MV Coolidge, which was recorded on December 17, 2008, Instrument No. 2008-120259 of the Official Records of the County Recorder, Pinal County, Arizona (the "Non-Exclusive Assignment"), in which Pulte assigned and MV Coolidge assumed certain rights and obligations under the Pre-Annexation and Development Agreement, on a non-exclusive basis as provided in the Non-Exclusive Assignment;
- F. WHEREAS, Pulte and MV Coolidge executed an Assumption of Underlying Option Agreement Obligations, which was recorded on December 17, 2008, in Instrument No. 2008-120261 of the Official Records of the County Recorder, Pinal County, Arizona (the "Assumption of Underlying Option Agreement Obligations"), in which MV Coolidge assumed certain obligations as provided therein and Pulte retained certain obligations as provided therein;
- G. WHEREAS, the parties consent to entering into this Amendment and allowing the terms of this Amendment to run with and encumber the Property;
- H. WHEREAS, the Development Agreement required that the fire service for the Property be provided by the Serving Fire Station, as that term is referenced in the Development Agreement, and that the Fire Operating Deficit, as that term is referenced in the Operating Agreement, for the Serving Fire Station was estimated at \$600,000 per fiscal year. Owner's share of the Fire Operating Deficit (the "Property's Pro-rata Share") was calculated as a fixed, semi-annual fee in the amount of \$300,000 to be reduced upon the City's issuance of certificates of occupancy for the Property and upon the addition of Other Served Property (defined below), on the terms described below;
- I. WHEREAS, the Development Agreement further required that the proportionate share of the Fire Operating Deficit for similarly situated property and projects also served by the Serving Fire Station (the "Other Served Property") be calculated by the City on a substantially similar basis as that method used in the City's calculation of the Property's Pro-rata Share;
- J. WHEREAS, a dispute arose between the City and Pulte concerning the Fire Operating Deficit, Pulte's refusal to pay the amounts claimed under the Development Agreement, and whether the City had breached its obligations under the Development Agreement

by not obligating other similarly situated property owners to contribute to the Serving Fire Station and Fire Operating Deficit in a substantially similar manner as Pulte. The City denied Pulte's claims. Pulte filed a lawsuit against the City, which was referred to arbitration with the American Arbitration Association;

- K. WHEREAS, the parties now want to resolve all issues between the parties and the arbitration pending before the American Arbitration Association, and as part of the Settlement Agreement, Pulte and MV Coolidge agree to pay a total sum of \$505,000.00 (the "Settlement Amount") to the City in satisfaction of all amounts arising from the Owners' obligation for the Serving Fire Station and the Fire Operating Deficit under the Development Agreement up to and including the end of the City's last fiscal year ending June 30, 2010. Pulte and MV Coolidge, in the portions described in the Purchase Agreement, agree to pay the Settlement Amount within ten (10) days of this Amendment being approved by the Coolidge City Council, being signed by all parties, and the end of any referendum period following the approval of the City Council;
- L. WHEREAS, the Parties wish to amend the terms of the Development Agreement to further define the Property's Pro-rata Share of the operating deficit of the Serving Fire Station for subsequent fiscal years;
- M. WHEREAS, the City, MV Coolidge and Pulte believe the Amendment to be enforceable against the Property with respect to these Parties;
- N. WHEREAS, the City, Pulte and MV Coolidge do not believe this Amendment imposes any additional obligations on Martin under the Development Agreement, and thus are executing this Amendment and intend that it run with and encumber the Property;
- O. WHEREAS, capitalized terms used in this Amendment but not defined will have those meanings ascribed to them in the Development Agreement; and
- P. WHEREAS, the parties are entering into this Amendment pursuant to the provisions of Arizona Revised Statutes ("A.R.S.") § 9-500.05.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and the mutual promises and covenants contained herein, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties hereby agree as follows:

1. Recitals. The Parties hereby acknowledge the accuracy of the Recitals, which are incorporated herein by this reference.
2. Operating Deficits of City Services. Sections 10(c)(ii) and (iii) of the Development Agreement are deleted in their entirety; and the following new Section 10(c)(ii), 10(c)(iii) and 10(c)(iv) shall be included:

Fire Operating Deficit.

(ii) Pulte and MV Coolidge shall pay to the City the sum of Five Hundred Five Thousand and 00/100 Dollars (\$505,000.00) within ten (10) business days of the date that this Amendment is approved by the Coolidge City Council, being signed by all parties, and the end of any referendum period following the approval of the City Council; and such amount shall be paid by Pulte and MV Coolidge in the portions described in the Purchase Agreement. If either Pulte or MV Coolidge fail to pay their proportionate share, the other party will be responsible to pay the unpaid amount. Such payment shall represent the outstanding actual operating costs for the Serving Fire Station up to and through the end of the City's fiscal year ended June 30, 2010.

Commencing immediately upon execution of this Amendment, the Property's Pro-rata Share shall be paid and reduced in accordance with Section 10(c)(iii) and/or Section 10(c)(iv) below.

(iii) Owner's obligation to pay the Fire Operating Deficit shall be paid and further reduced as follows:

(A) The City and MV Coolidge agree that the Operating Deficit applicable to the Property for fire service from the Serving Fire Station (the "Fire Operating Deficit") shall be a maximum annual payment of \$135,360.00 per year, subject to reduction as provided elsewhere herein. This amount due shall be payable in two (2) payments as discussed in Section 10(c)(iii)(B) below. The Fire Operating Deficit represents the Owners' Proportionate Share of the actual annual operating cost of the Serving Fire Station. The Fire Operating Deficit Obligation shall be paid and may be further reduced as follows:

(B) The first payment of \$67,680.00 for the Fire Operating Deficit shall be made by MV Coolidge to the City on or before the tenth (10th) day following this Amendment being approved by the Coolidge City Council, being signed by all parties, and the end of any referendum period following the approval of the City Council. MV Coolidge shall thereafter pay \$67,680.00 on each March 15th and September 15th thereafter, subject to the reductions contained in Sections 10(c)(iii)(C)-(H) below.

(C) Upon the issuance by the City of certificates of occupancy for 35% of the total number of residential lots established for the Property as set forth in the PAD Plan

referenced and identified in that certain Pre-Annexation and Development Agreement recorded on April 11, 2006 and identified above, provided however, such total may be reduced to the number of lots shown on an approved plat if such number is less than the number of lots shown in the PAD Plan (the "Total Lot Count"), the amount of each semi-annual installment payment of the Fire Operating Deficit set forth in clause (iii)(A) and (B) above shall be reduced by 30%.

(D) Upon the issuance by the City of certificates of occupancy for 50% of the Total Lot Count for the Property, the amount of each semi-annual installment payment of the Fire Operating Deficit set forth in clause (iii)(A) and (B) above shall be reduced by 45%.

(E) Upon the issuance by the City of certificates of occupancy for 80% of the Total Lot Count for the Property, the amount of each semi-annual installment payment of the Fire Operating Deficit set forth in clause (iii)(A) and (B) above shall be reduced by 75%.

(F) Upon the issuance by the City of certificates of occupancy for 90% of the Total Lot Count for the Property, Owner shall be released from its obligation to pay any Fire Operating Deficit set forth in this Amendment. However, it shall be the obligation of the Owner to request a reduction of the Fire Operating Deficit based on the City's issuance of certificates of occupancy for the Property. This request for a reduction shall be made no less than one (1) month prior to the date each semi-annual payment is due, pursuant to Section 10(iii)(B) above. If the Owner fails to timely request a reduction as defined herein, the Owner waives the right to the reduction for that semi-annual payment, but may request a reduction for subsequent semi-annual payments.

(G) In addition to the reduction to the Fire Operating Deficit payments based on the foregoing, the Owners' Proportionate Share of the Fire Operating Deficit, as defined in Section 10(c)(iii)(B) shall also be reduced if the City reduces its paid fire fighter employees (as compared to its volunteer fire fighters). The City and Serving Fire Station are currently operated by a full-time Fire Chief, three full-time paid fire fighters, and volunteer fire fighters. The parties agree that if the City reduces the number of paid, full-time fire fighters, Owners shall be entitled to a reduction of their Proportionate Share of the Fire Operating Deficit.

Specifically, for every full-time paid fire fighter position that is eliminated, Owners shall be entitled to a reduction of their Proportionate Share of the Operating Deficit by one-third. For every two full-time paid fire-fighting positions that are eliminated, Owners shall be entitled to a reduction of their Proportionate Share of the Operating Deficit by two-thirds. If the City eliminates all three paid fire-fighting positions, Owners' obligation to pay their Proportionate Share of the Fire Operating Deficit shall be reduced to zero until such time as the City hires full-time paid firefighters for the Serving Fire Station. As full-time paid fire fighter positions are added, payments as set forth herein will be reinstated. It shall be the obligation of the Owner to request a reduction of the Fire Operating Deficit based on the City's reduction of its paid fire fighter employees. This request for a reduction shall be made no less than one (1) month prior to the date each semi-annual payment is due, pursuant to Section 10(iii)(B) above. If the Owner fails to timely request a reduction as defined herein, the Owner waives the right to the reduction for that semi-annual payment, but may request a reduction for subsequent semi-annual payments.

(iv) The actual annual operating costs of the Serving Fire Station shall be increased annually, each April 1st commencing April 1, 2012, based on increases in the Consumer Price Index as follows:

On April 1 of each year, the annual operating costs for the succeeding year shall increase by the same percentage increase in the U.S. CPI – All Items – U.S. City Average, All Urban Consumers (the base year reference period is 1982 – 1984 = 100) as published by the Bureau of Labor Statistics of the U.S. Department of Labor. In the event of discontinuance of the CPI as currently reported, a comparable index of price changes shall be substituted.

3. City Consent to Non-Exclusive Assignment: The City acknowledges that Pulte and MV Coolidge executed the Non-Exclusive Assignment. The City hereby consents to the Non-Exclusive Assignment.
4. City Consent to Assumption of Underlying Option Agreement Obligations: The City acknowledges that Pulte and MV Coolidge executed the Assumption of Underlying Option Agreement Obligations. The City hereby consents to the Assumption of Underlying Option Agreement Obligations by MV Coolidge.
5. Release. The parties for themselves and their Mayor, Council Members, shareholders, officers, directors, heirs, agents, assigns and successors, hereby release and discharge

each other and themselves of and from any and all claims or causes of action which they had, now have or which the Mayor, Council Members shareholders, officers, directors, heirs, agents, assigns and successors hereafter may have on account of or in any way arising out of the Pre-Annexation and Development Agreement recorded on April 11, 2006 as referenced and identified herein. This Release is intended to and does cover all claims and matters as set forth above, whether known at the time of execution of this Amendment and Settlement Agreement or not, which have resulted or may hereinafter result or be discovered or which may have been caused or claimed to have been caused by any of the transactions, occurrences or any matters relating either directly or indirectly to the matters described in this Amendment.

6. Binding Obligation. Notwithstanding the lack of Martin's signature, the City, MV Coolidge and Pulte agree: (i) that the terms set forth herein reflect the intent of the parties in resolving all disputes between the parties and the arbitration pending before the American Arbitration Association, (ii) that the rights and obligations under this Amendment shall be enforceable by and binding on the City, MV Coolidge and Pulte; and (iii) that in no event will MV Coolidge or Pulte's obligation to pay the Fire Operating Deficit exceed \$135,360.00 per year, subject to reductions and increases as provided elsewhere herein.
7. Effective Date; Recordation. This Amendment shall become effective and shall be binding upon and enforceable by the Parties upon its recordation in the official recorder of Pinal County, Arizona, which shall occur no later than ten (10) days after the mutual execution of this Amendment.
8. Successors-in-Interest. This Amendment will be binding upon and inure to the benefit of the Parties, their respective heirs, successors and assigns. In the event that MV Coolidge decides to sell the Property described herein, or any portion thereof, MV Coolidge shall disclose this Amendment to the buyer and shall provide the City and Martin with thirty (30) days' notice before such sale is complete.
9. Entire Agreement; Full Force and Effect. This Amendment contains the entire agreement between all of the Parties to this Amendment pertaining to the subject matter hereof, save and except for other individual written agreements between one or more, but less than all, parties regarding their respective obligations to each other; provided, however, that such written agreements do not alter the intent and purpose of this Amendment. This Amendment and Settlement Agreement is in addition to the Development Agreement and does not otherwise alter or amend the provisions of that Development Agreement unless specifically stated herein. All other terms and provisions of the Development Agreement not specifically altered or amended in this Amendment shall remain in full force and effect. Neither this Amendment, nor the Development Agreement shall be further amended without the written consent and approval of the Owners of the Property as then constituted and the City.
10. Counterparts. This Amendment may be executed in any number of counterparts, each of which shall be deemed to be an original, and all such counterparts together shall

constitute one and the same instrument. A fully-executed facsimile copy of this Amendment shall be treated as an original.

11. Severability. If any provision of this Amendment is declared void or unenforceable, such provision shall be severed from this Amendment, which shall otherwise remain in full force and effect. If any applicable law or court of competent jurisdiction prohibits or excuses the City from undertaking any contractual commitment to perform any act hereunder, this Amendment shall remain in full force and effect, but the provision requiring such action shall be deemed to permit the City to take such action at its discretion, if such a construction is permitted by law.
12. Governing law. This Amendment is entered into in Arizona and shall be construed and interpreted under the laws of Arizona. Any dispute, controversy, claim or cause of action arising out of or relating to this Amendment shall be resolved in accordance with the provisions and terms of the Pre-Annexation and Development Agreement recorded on April 11, 2006 as referenced and identified herein. The provisions of A.R.S. § 38-511 are incorporated herein and made a part hereof.

[SIGNATURES ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have executed this First Amendment to Pre-Annexation and Development Agreement on the date written below.

DATED this ___ of _____, 2011.

CITY:

CITY OF COOLIDGE, ARIZONA,
a municipal corporation

By: _____
Thomas R. Shope, Mayor for City of Coolidge
Date: _____

Attest:

Norma Ortiz, Clerk for City of Coolidge

APPROVED AS TO FORM AND AUTHORITY
The foregoing Amendment has been reviewed by
the undersigned attorney, who has determined that
it is in proper form and within the power and
authority granted under the laws of the State of
Arizona to the City of Coolidge.

Denis Fitzgibbons, Attorney for City of Coolidge

PULTE:

PULTE HOME CORPORATION,
a Michigan corporation

By: _____
Name/Title:
Date: _____

MV COOLIDGE:

MV COOLIDGE, LLC, an Arizona
limited liability company

By: DolphinLand, LLC, a California
limited liability company, its Manager

By: Dolphin Partners, Inc., a California
Corporation, its Manager

By: _____
Name/Title:
Date: _____

STATE OF ARIZONA)
)ss.
County of Pinal)

The foregoing instrument was acknowledged before me this ____ day of _____, 2011, by Thomas R. Shope, the Mayor for the CITY OF COOLIDGE, a municipal corporation.

Notary Public

My Commission Expires:

STATE OF)
)ss.
County of)

The foregoing instrument was acknowledged before me this ____ day of _____, 2011, by _____, as _____ of PULTE HOMES CORPORATION, a Michigan corporation.

Notary Public

My Commission Expires:

STATE OF)
)ss.
County of)

The foregoing instrument was acknowledged before me this ____ day of _____, 2011, by _____, as _____ of MV COOLIDGE, LLC, an Arizona limited liability company.

Notary Public

My Commission Expires:

EXHIBIT A
LEGAL DESCRIPTION OF PROPERTY