

**Recording Requested by and
When Recorded Return to:**

Attn: _____

SPACE ABOVE THIS LINE FOR RECORDER'S USE

APN: _____

PARTIAL ASSIGNMENT AND ASSUMPTION AGREEMENT
(Development Agreement (Alameda Landing Mixed Use Commercial Project) – Remainder
Residential Parcel)

This Partial Assignment and Assumption Agreement (Development Agreement (Alameda Landing Mixed Use Commercial Project) – Remainder Residential Parcel) (the “Agreement”) is made for reference purposes as of _____, 20____, by and between CATELLUS ALAMEDA DEVELOPMENT, LLC, a Delaware limited liability company (“Assignor”), and PULTE HOME COMPANY, LLC, a Michigan limited liability company (“Assignee”).

RECITALS

This Agreement is entered into upon the basis of the following facts, understandings, and intentions of Assignor and Assignee:

A. The City of Alameda, a municipal corporation existing under the law of the State of California and its Charter (the “City”), and Palmtree Acquisition Corporation, a Delaware corporation (“PAC”), predecessor in interest to Assignor, entered into that certain Development Agreement (Alameda Landing Mixed Use Commercial Project), dated as of January 16, 2007, and recorded in the Official Records of Alameda County, California (the “Official Records”) on July 24, 2007, as Series No. 2007275741, as amended by that certain First Amendment to Development Agreement (Alameda Landing Mixed Use Commercial Project), dated as of December 4, 2007 and recorded in the Official Records on December 20, 2007, as Series No. 2007427557, and as assigned by that certain Assignment and Assumption Agreement (Development Agreement (Alameda Landing Mixed Use Commercial Project)) by and between PAC, as assignor, and Assignor, as assignee, effective as of February 28, 2011, and recorded in the Official Records on June 10, 2011, as Instrument No. 2011168603, that certain Partial Assignment (Development Agreement (Alameda Landing Mixed Use Commercial Project) – Remaining Portion of Parcel 2) by and between Assignor and Target Corporation, a Minnesota corporation, effective as of July 18, 2012, and recorded in the Official Records on September 10, 2012, as Instrument No. 2012295655, that certain Partial Assignment and

Assumption Agreement (Development Agreement (Alameda Landing Mixed Use Commercial Project) – Remaining Portion of Parcel 2) by and between Assignor and Catellus Alameda Retail, LLC, a Delaware limited liability company effective as of December 12, 2013, and recorded in the Official Records on December 12, 2013, as Instrument No. 2013381982, and that certain Partial Assignment and Assumption Agreement (Development Agreement (Alameda Landing Mixed Use Commercial Project) – Waterfront) by and between Assignor and FISC Properties LLC, a California limited liability company effective as of December 15, 2017, and recorded in the Official Records on December 18, 2017, as Instrument No. 2017277610 (collectively, the “Commercial DA”).

B. The Commercial DA relates to certain real property located in the City of Alameda, County of Alameda, State of California (the “Alameda Landing Commercial Property”). The Alameda Landing Commercial Property is more particularly described in the Commercial DA and Exhibit A attached hereto.

C. All defined terms not specifically defined herein shall have the meanings ascribed to them in the Commercial DA.

D. The Commercial DA provides for a mixed use development, consisting of the Alameda Landing Commercial Project on the Alameda Landing Commercial Property, as more particularly described in the Commercial DA and the Alameda Landing DDA (as amended and refined and clarified the “DDA”).

E. Pursuant to the DDA, the Community Improvement Commission of the City of Alameda (the “CIC”) agreed to convey to Assignor, and Assignor agreed to acquire from the CIC, the Property, in phases, on the terms and conditions set forth in the DDA.

F. Pursuant to ABx1 26 (as revised by AB 1484), on February 1, 2012, the Successor Agency of the Community Improvement Commission of the City of Alameda (the “Successor Agency”), acquired the Property and assumed the CIC’s obligations pursuant to the DDA by operation of law.

G. Assignor intends to cause Successor Agency to convey a portion of the Alameda Landing Commercial Property to Assignor, which real property is more particularly described in Exhibit B attached to this Agreement (the “Assigned Property”).

H. Assignor intends to convey the Assigned Property to Assignee.

I. In conjunction with the conveyance of the Assigned Property to Assignee, Assignor desires to assign to Assignee certain of Assignor’s rights, duties and obligations under the Commercial DA with respect to the Assigned Property only, and Assignee desires to accept and assume certain of Assignor’s rights, duties and obligations under the Commercial DA with respect to the Assigned Property only (collectively and as described and defined more particularly in Section 4, below, the “Assigned Interests”), and Developer shall retain all of its other rights, duties and obligations under the Commercial DA (collectively, the “Retained Interests”). For the avoidance of doubt, the Assigned Interests exclude, and the Retained Interests include, all rights to reimbursements relating to the Assigned Property.

J. Assignor and Assignee acknowledge and agree that Assignee intends to construct up to ____ housing units on the Assigned Property, all in accordance with the Project Approvals (the “Assigned Development Rights”).

NOW, THEREFORE, in consideration of the promises and the mutual agreements and covenants set forth herein and intending to be legally bound hereby, Assignor and Assignee do hereby agree as follows:

1. Effective Date. For purposes of this Agreement, in accordance with Section 9.1 of the Commercial DA, the “Effective Date” shall be the date on which the deed from the Assignor to Assignee for the Assigned Property is recorded in the Official Records.

2. Assignment. From and after the Effective Date, Assignor hereby assigns to Assignee, without representation or warranty, all of Assignor’s rights, title and interest in and to the Assigned Interests.

3. Assumption. From and after the Effective Date, Assignee hereby assumes from Assignor all of Assignor's right, title and interest in and to the Assigned Interests, and agrees to perform all of Assignor's obligations as “Developer” under the Commercial DA with respect to the Assigned Interests relating to the period from and after the Effective Date.

4. Assigned Interests.

(a) Except as otherwise provided in Sections 4(e) and 4(f) below, the “Assigned Interests” shall mean and include all of the rights of Assignor under the Commercial DA that (i) apply exclusively to the Assigned Property, or (ii) apply nonexclusively to the Assigned Property solely to the extent necessary to develop the Assigned Property in accordance with the Assigned Development Rights; provided, however, Sections 6.2 (Amendments to or Cancellation of Development Agreement), and 6.3 (Operating Memoranda) of the Commercial DA, shall be subject to Section 7 of this Agreement.

(b) Except as otherwise provided in Sections 4(e) and 4(f) below, the Assigned Interests shall also mean and include all of the obligations of Assignor under the Commercial DA that apply to, occur on, or arise from the Assigned Property or the Assigned Development Rights.

(c) Except as otherwise provided in Sections 4(e) and 4(f) below, the Assigned Interests shall also mean and include, with respect to the Assigned Property only, all of the rights and obligations of Assignor under the Master Plan Conditions, that are identified in the Master Plan Conditions as:

(i) “ALC developer shall be responsible for the ALC site”; and

(ii) “ALC developer shall be responsible for ALC site and the AL Backbone Infrastructure” solely with respect to the obligations of the ALC developer for the ALC site.

(d) Except as otherwise provided in Sections 4(e) and 4(f) below, the Assigned Interests shall also mean and include, with respect to the Assigned Property only, all of the obligations of Assignor under the MMRP (as such may be amended from time to time) that are identified in the MMRP:

(i) as obligations of the “ALC developer for ALC site” or “ALC site owners”;

(ii) as obligations of the “ALC developer for ALC site and AL Backbone Infrastructure” solely with respect to the obligations of the ALC developer for ALC site;

(iii) under HYD-4 (p.10) as “ALC . . . site owners, through contributions to the TDM program per applicable AL Development Agreement”;

(iv) under T/C-8b (p.26) as “ALC . . . site owners, through contributions to the TDM program per applicable AL Development Agreement”; and

(v) under AQ-2 (p.34) as “ALC . . . site owners, through contributions to the TDM program . . . , per applicable AL Development Agreement”.

(e) Exclusions from MMRP Obligations. The Assigned Interests shall not mean or include, and Assignee shall have no right, title, interest, or obligation under the MMRP that are identified in the MMRP:

(i) as obligations of the “ALC developer for AL Backbone Infrastructure”, “ALC developer for ALC Backbone Infrastructure”, “ALC developer and City STIP funds for Tinker”, or “ALC developer/City STIP funds”;

(ii) as obligations of the “ALC developer for ALC site and AL Backbone Infrastructure” solely with respect to obligations of Developer for Backbone Infrastructure;

(iii) any obligation shown as Completed;

(iv) under HYD-4 (p.10) as “ALC Developer for establishment of BMPs” and “ALC developer to establish TDM Program per the applicable AL Development Agreement; TDM provider to implement measures”;

(v) under HAZ-1c (p.14), as “ALC Developer to ALC site,” solely the obligation to prepare the SMP.

(vi) under to T/C-8b (p.26) as “ALC Developer to establish TDM Program per the applicable AL Development Agreement; TDM provider to implement measures”;

(vii) under T/C-11b and c (p.28) as “ALC developer”;

- (viii) under T/C-20b, d, e and f (p.29) as “ALC developer”;
- (ix) under T/C-21h(a) (p.31) as “ALC developer”;
- (x) under T/C-21j (p.31) as “ALC developer”;
- (xi) under AQ-2 (p.34) as “ALC Developer to establish TDM Program per the applicable AL Development Agreement; TDM provider to implement measures”; and
- (xii) under UTL-5 (p.38) as “ALC developer”.

(f) Exclusions from Commercial DA Obligations. The Assigned Interests shall not mean or include, and Assignee shall have no right, title, interest, or obligation pursuant to the following provisions of the Commercial DA:

- (i) Section 1.5.8 (Joint Implementation Agreement);
- (ii) Section 3.3.4 (Off-Premises Directional Signs);
- (iii) Section 3.6.4(c) (pertaining to certain aspects of the MDGIP);
- (iv) Section 3.7 (Stargell Avenue);
- (v) Section 3.12.1(a), (c), and (d) (pertaining to certain funding, reporting and success criteria related to the TDM Program);
- (vi) Section 3.12.2 (Transportation Management Payments);
- (vii) Section 4.1 (Peralta Community College District Coordination);
- (viii) Section 4.2 (Conveyance of Backbone Infrastructure);
- (ix) Section 4.3.1(a) (Community Facilities District and Municipal Services District Formation) solely as it pertains to community facilities districts;
- (x) Section 4.4 (Eminent Domain Powers);
- (xi) Section 4.5 (Public Improvements/Backbone Infrastructure);
- (xii) Section 4.9 (Map); and
- (xiii) Section 4.10 (Western Alameda Business Association (“WABA”)).

5. Assignor’s Release. Pursuant to Section 9.2 of the Commercial DA, from and after the Effective Date, Assignor shall be released from all obligations and liabilities under the Commercial DA with respect to the Assigned Property and the Assigned Interests.

6. Events of Default.

(a) No Assignor Liability for Assignee Default. From and after the Effective Date, any Event of Default under the Commercial DA by Assignee with respect to the Assigned Property or Assigned Interests shall not be considered an Event of Default by Assignor under the Commercial DA with respect to the Retained Property (as defined in Section 7(b) below) or Retained Interests (or any other assignee under the Commercial DA that owns a portion of the Property with respect to the property that such assignee owns and the assigned interests related thereto). Subject to the execution by the City of the Consent to Partial Assignment and Assumption Agreement (Development Agreement (Alameda Landing Mixed Use Commercial Project) – Remainder Residential Parcel) (the “Consent”) attached hereto, in the event of such an Event of Default by Assignee with respect to the Assigned Property or Assigned Interests, the City will not impose any remedies under the Commercial DA against Assignor (or any other assignee under the Commercial DA that owns a portion of the Property) arising from such Event of Default by Assignee.

(b) No Assignee Liability for Assignor Default. From and after the Effective Date, any Event of Default by Assignor occurring or arising prior to, on or after the Effective Date under the Commercial DA with respect to the Retained Property or Retained Interests shall not be considered an Event of Default by Assignee under the Commercial DA with respect to the Assigned Property or Assigned Interests (or any other assignee under the Commercial DA that owns a portion of the Property with respect to the property that such assignee owns and the assigned interests related thereto). Subject to the execution by the City of the Consent, in the event of such an Event of Default by Assignor with respect to the Retained Property or Retained Interests, the City will not impose any remedies under the Commercial DA against Assignee (or any other assignee under the Commercial DA that owns a portion of the Property) arising from such Event of Default by Assignor.

7. Amendment of Commercial DA or Project Approvals; Operating Memoranda.

(a) Assignor may, in Assignor’s sole and absolute discretion (but with necessary Successor Agency consent), process and record any interpretation of, amendment to, or operating memorandum under the Commercial DA that does not materially affect Assignee’s ownership, development, and sale of the Assigned Property in accordance with the Assigned Development Rights, and, if necessary, Assignee shall execute all documents necessary to accomplish said amendment.

(b) Assignee shall not request, process or consent to any interpretation of, amendment to, or operating memorandum under the Commercial DA that would affect (i) Assignor’s Retained Interests or that portion of the Property retained or acquired by Assignor after the conveyance of the Assigned Property to Assignee, including, without limitation, any portion of the Property Assignor has not acquired but has the right to acquire pursuant to the DDA (collectively, the “Retained Property”) pursuant to the Commercial DA without Assignor’s prior written consent, in Assignor’s sole and absolute discretion, or (ii) any portion of the Property owned by any other assignee under the Commercial DA or the assigned interests relating thereto without the prior written consent of such assignee. Further, notwithstanding anything in the Assigned Interests or this Agreement to the contrary, including, without limitation, Section 6.4 of the Commercial DA, Assignee agrees not to exchange, swap or otherwise change the

Assigned Development Rights without Assignor's prior written consent, in Assignor's sole and absolute discretion, including, without limitation, any change in use or allocation of units between parcels or any other modifications as may otherwise be permitted pursuant to the Master Plan.

8. Annual Review of Development Agreement Compliance.

(a) Assignor Responsibilities. Assignor shall participate in the annual review of the Commercial DA conducted pursuant to California Government Code Section 65865.1 and Alameda Municipal Code Section 30-95.1 with respect to the Retained Property or the Retained Interests pursuant to the Commercial DA, and Assignee shall have no responsibility therefor.

(b) Assignee Responsibilities. Assignee shall participate in the annual review of the Commercial DA Agreement conducted pursuant to California Government Code Section 65865.1 and Alameda Municipal Code Section 30-95.1 with respect to the Assigned Property and the Assigned Interests, and Assignor shall have no responsibility therefor.

9. General Provisions.

(a) Severability. If any term or provision of this Agreement or the application thereof to any person or circumstance is found by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each remaining term and provision of this Agreement shall be valid and enforceable to the full extent permitted by law; provided that, if the invalidation or unenforceability would deprive either Assignor or Assignee of material benefits derived from this Agreement or make performance under this Agreement unreasonably difficult, then Assignor and Assignee shall meet and confer and shall make good faith efforts to modify this Agreement in a manner that is acceptable to Assignor, Assignee and the Successor Agency.

(b) Successors and Assigns. This Agreement shall be binding upon and inure solely to the benefit of the parties hereto and their permitted successors and assigns.

(c) Applicable Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of California, applicable to contracts executed in and to be performed entirely within that state, and without regard to the conflicts of laws, or choice of law provisions thereof.

(d) Counterparts. This Agreement may be executed in one (1) or more counterparts, each of which shall be deemed an original but all of which taken together shall constitute one and the same agreement.

(e) Notices. All notices, invoices and other communications required or permitted under this Agreement shall be made in writing, and shall be delivered either personally (including by private courier), by certified mail, postage prepaid and return receipt requested, or by nationally recognized overnight courier service to the following addresses, or to such other addresses as the parties may designate in writing from time to time:

If to Assignee:

Attention: _____

with copies to:

Attention: _____

and to:

Pircher, Nichols & Meeks
1925 Century Park East, Suite 1700
Los Angeles, California 90067
Attention: Real Estate Notices (Alex
Jacobs/627.296)

If to Assignor:

Catellus Alameda Development, LLC
160 Newport Center Drive, Suite 120
Newport Beach, CA 92660
Attention: Tom Marshall

with copies to:

Catellus Alameda Development, LLC
66 Franklin Street, Suite 200
Oakland, California 94607
Attention: Bill Hosler

and to:

Cox, Castle & Nicholson LLP
50 California Street, Suite 3200
San Francisco, California 94111
Attn: Margo N. Bradish, Esq.

Notices personally delivered shall be deemed received upon delivery. Notices delivered by certified mail as provided above shall be deemed received on actual delivery. Notices delivered by courier service as provided above shall be deemed received one (1) business day after the date of deposit for overnight delivery. From and after the Effective Date and until further written notice from Assignee to the Successor Agency pursuant to the terms of the Commercial DA, Assignee hereby designates as its notice address for notices sent by the Successor Agency pursuant to Section 11.3 of the Commercial DA, the notice address set forth above.

(f) Estoppel Certificates. Within ten (10) days after receipt of a written request from time to time, either party shall execute and deliver to the other, or to an auditor or prospective lender or purchaser, a written statement certifying to that party's actual knowledge: (i) that the Commercial DA is unmodified and in full force and effect (or, if there have been modifications, that the Commercial DA is in full force and effect, and stating the date and nature of such modifications); (ii) that there are no current defaults under the Commercial DA by the Successor Agency and the requesting party (or the responding party, if the requesting party is the Successor Agency) (or, if defaults are asserted, so describing with reasonable specificity), and

that there are no conditions which, with the passage of time or the giving of notice, or both, would constitute a default; (iii) that this Agreement is unmodified and in full force and effect (or, if there have been modifications, that this Agreement is in full force and effect, and stating the date and nature of such modifications); and (iv) such other matters as may be reasonably requested.

(g) Attorneys' Fees. In the event of any legal or equitable proceeding in connection with this Agreement, the prevailing party in such proceeding shall be entitled to recover its reasonable costs and expenses, including without limitation reasonable attorneys' fees, costs and disbursements paid or incurred in good faith at the arbitration, pre-trial, trial and appellate levels, and in enforcing any award or judgment granted pursuant thereto.

(h) No Waiver. No delay or omission by either party in exercising any right, remedy, election or option accruing upon the noncompliance or failure of performance by the other party under the provisions of this Agreement shall constitute an impairment or waiver of any such right, remedy, election or option. No alleged waiver shall be valid or effective unless it is set forth in a writing executed by the party against whom the waiver is claimed. A waiver by either party of any of the covenants, conditions or obligations to be performed by the other party shall not be construed as a waiver of any subsequent breach of the same or any other covenants, conditions or obligations.

(i) Amendment. This Agreement may be amended only by a written agreement signed by both Assignor and Assignee and with the consent of the City.

(j) No Joint Venture. Nothing contained herein shall be construed as creating a joint venture, agency, or any other relationship between the parties hereto other than that of assignor and assignee.

(k) Third Party Beneficiaries. Assignor and Assignee acknowledge that the City is a third party beneficiary of the terms and conditions of this Agreement to the extent necessary for City to enforce the terms and conditions of the Commercial DA. This Agreement shall not be deemed or construed to confer any rights, title or interest, including without limitation any third party beneficiary status or right to enforce any provision of this Agreement, upon any person or entity other than Assignor, Assignee and the City.

(l) Time of the Essence. Time is of the essence in the performance by each party of its obligations under this Agreement.

(m) Authority. Each person executing this Agreement represents and warrants that he or she has the authority to bind his or her respective party to the performance of its obligations hereunder and that all necessary board of directors', shareholders', partners', members', managers', and other approvals have been obtained.

[signature page follows]

IN WITNESS WHEREOF, Assignor and Assignee have caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

ASSIGNOR:

CATELLUS ALAMEDA DEVELOPMENT, LLC,
a Delaware limited liability company

By: _____
Name: _____
Title: _____

ASSIGNEE:

PULTE HOME COMPANY, LLC, a Michigan limited liability company

By: _____
Name: _____
Title: _____

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
) ss:
COUNTY OF _____)

On _____, 20__ before me, _____(here
insert name of the officer), Notary Public, personally appeared
_____, who proved to me on the basis of satisfactory
evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and
acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies),
and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of
which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the
foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature of Notary Public

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
) ss:
COUNTY OF _____)

On _____, 20__ before me, _____(here
insert name of the officer), Notary Public, personally appeared
_____, who proved to me on the basis of satisfactory
evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and
acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies),
and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of
which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the
foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature of Notary Public

STATE OF CALIFORNIA)
) ss:
COUNTY OF _____)

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EXHIBIT A

Legal Description of Alameda Landing Commercial Property

That certain real property described in Exhibit A to that certain Development Agreement (Alameda Landing Mixed Use Commercial Project), dated as of January 16, 2007, and recorded in the Official Records of Alameda County, California, on July 24, 2007, as Series No. 2007275741

APNs: _____

EXHIBIT B

Legal Description of the Assigned Property

Real property in the City of Alameda, County of Alameda, State of California described as follows:

[_____]

APNs: _____

**CONSENT TO PARTIAL ASSIGNMENT AND ASSUMPTION AGREEMENT
(DEVELOPMENT AGREEMENT (ALAMEDA LANDING MIXED USE
COMMERCIAL PROJECT) – REMAINDER RESIDENTIAL PARCEL)**

Any terms not otherwise defined in this Consent to Partial Assignment and Assumption Agreement (Development Agreement (Alameda Landing Mixed Use Commercial Project) – Remainder Residential Parcel) (the “Consent”) shall have the meanings ascribed to them in the Agreement to which this Consent is attached. The City of Alameda, a municipal corporation existing under the law of the State of California and its Charter (the “City”), hereby consents and agrees to the terms of the Partial Assignment and Assumption Agreement (Development Agreement (Alameda Landing Mixed Use Commercial Project) – Remainder Residential Parcel) by and between Catellus Alameda Development, LLC, a Delaware limited liability company (“Master Developer”), as Assignor, and Pulte Home Company, LLC, a Michigan limited liability company (“Pulte”), as Assignee, to which this Consent is attached.

The City further agrees that if Master Developer provides written notice to the City that it has subsequently acquired all or any portion of the Assigned Property (the “Acquired Assigned Property”) from Pulte that the City’s consent to a partial assignment of the Commercial DA related to the Acquired Assigned Property back to the Master Developer, as the original Assignor, shall not be required, provided that the Master Developer and Pulte execute and record a partial assignment substantially in the form of the Agreement to which this Consent is attached and promptly provides a certified conformed copy of the recorded agreement to the City. A partial assignment of the Commercial DA related to a subsequent conveyance of the Acquired Assigned Property shall require the consent of the City in accordance with Article 9 of the Commercial DA.

City of Alameda,
a municipal corporation

By: _____
Eric J. Levitt
City Manager

Approved as to form:

By: _____
Celena H. Chen
Chief Planning Counsel

Recommended for Approval:

By: _____
Debbie Potter
Base Reuse and Community
Community Development Director

[illegible]

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

Signature of Notary Public