PROPERTY ADDRESS:
VACANT PROPERTY AT THE
NORTHEAST CORNER OF
ROUTE 59 AND 103rd STREET
NAPERVILLE, IL 60564

P.I.N.S
07-01-10-300-002
07-01-10-300-028
07-01-10-300-029

RETURN TO:
City of Naperville
City Clerk's Office
400 South Eagle Street
Naperville, IL 60540

OWNERS' ACKNOWLEDGEMENT AND ACCEPTANCE AGREEMENT FOR WAGNER FARMS PHASES 1A/1B, 2 AND 3

This Owners' Acknowledgement and Acceptance Agreement ("**Agreement**") for Wagner Farms Phases 1A/1B, 2 and 3, located at the northeast corner of Route 59 and 103rd Street, Naperville, Illinois 60564, is entered into by and between the City of Naperville, a home rule unit of local government under the Constitution and laws of the State of Illinois ("**CITY**"), with an address of 400 South Eagle Street, Naperville, Illinois 60540, and Pulte Home Company, LLC ("**OWNER AND DEVELOPER/RESIDENTIAL**"), with offices at 1900 East Golf Road, Suite 300, Schaumburg Illinois 60173, and with The Compass Evangelical Free Church, with offices located at 2244 95th Street, Naperville, IL 60564 ("**OWNER AND DEVELOPER/CHURCH**"). The **OWNER AND DEVELOPER/RESIDENTIAL** and the **OWNER AND DEVELOPER/CHURCH** are hereinafter sometimes collectively referenced as "**OWNERS**" and sometimes individually as "**OWNER**". The CITY, the OWNER AND DEVELOPER/RESIDENTIAL, and the OWNER AND DEVELOPER/CHURCH are together hereinafter referred to as the "**Parties**" and sometimes individually as "**Party**".

RECITALS

A. This Agreement pertains to approximately 113 acres of real property within the corporate limits of the City of Naperville generally located at the northeast corner of Route 59 and 103rd Street, Naperville, Illinois having parcel identification numbers of 07-01-10-300-002, 07-01-10-300-028 and 07-01-10-300-029 ("**SUBJECT PROPERTY**").

B. The SUBJECT PROPERTY is subject to the terms and conditions set forth in the following ordinances ("**Ordinances**"), approved for the SUBJECT PROPERTY by the Naperville City Council on February 5, 2019:

19-020 An ordinance authorizing the execution of an Annexation Agreement for the property located at the northeast corner of Route 59 and 103rd Street (Wagner Farms)

19-021 An ordinance annexing certain property located at the northeast corner of Route 59 and 103rd Street (Wagner Farms)

19-022 An ordinance rezoning certain property located at the northeast corner of Route 59 and 103rd Street (Wagner Farms) to OCI (Office, Commercial, and Institutional District) and R2 (Single-family and Low Density Multiple Family Residence District)

19-023 An ordinance approving the preliminary plat of subdivision for Wagner Farms

19-024 An ordinance approving a variance to Section 6-16-4 (Signs on Residential Property) of the Naperville Municipal Code for Wagner Farms

The Ordinances took effect on April 9, 2019, the date they were recorded with the Will County Recorder.

C. Upon annexation, approximately 105 acres of said SUBJECT PROPERTY were zoned R2 (Single Family and Low Density Multiple Family Residence) District ("**WAGNER FARMS-RESIDENTIAL PROPERTY**"), and the remaining approximately 8 acres were zoned OCI (Office Commercial and Institutional) ("**WAGNER FARMS-CHURCH PROPERTY**").

D. The OWNERS intend to subdivide the SUBJECT PROPERTY in Phase 1A, Phase 1B, Phase 2, and Phase 3 (hereinafter referenced as "**PHASE**" or "**PHASES**") as depicted on the Wagner Farms Phasing Exhibit attached hereto as **EXHIBIT A** ("**PHASING EXHIBIT**"), with OWNER AND DEVELOPER/RESIDENTIAL improving the WAGNER FARMS-RESIDENTIAL PROPERTY with up to three hundred and twelve (312) single-family detached dwelling units and OWNER AND DEVELOPER/CHURCH improving the WAGNER FARMS-CHURCH PROPERTY with a religious institution.

E. This Agreement shall be applicable to each PHASE of the SUBJECT PROPERTY equally.

F. By entering into this Agreement, the CITY is acting pursuant to its home rule authority under the Constitution and laws of the State of Illinois.

NOW THEREFORE, in consideration of the mutual promises and agreements set forth herein, the Parties agree as follows:

1. **Recitals Incorporated.** The foregoing Recitals are incorporated herein as though fully set forth in this Section 1.

2. **Ongoing Compliance.** In the development and operation of the SUBJECT PROPERTY, the OWNERS shall be subject to and shall fulfill all conditions set forth or referenced herein associated with the SUBJECT PROPERTY, including but not limited to: (i) the terms of this Agreement; (ii) the terms of the Annexation Agreement, (iii) the provisions of the Naperville Municipal Code, as amended from time to time; (iv) all Ordinances and resolutions passed or adopted by the Naperville City Council related to the SUBJECT PROPERTY, and (v) all applicable laws and regulations.

3. **Effect of Annexation Agreement.**

   3.1 Terms and Conditions of Annexation Agreement Affirmed. An annexation agreement ("**Annexation Agreement**") for the SUBJECT PROPERTY was approved by the Naperville City Council on February 5, 2019 by Ordinance No. 19-020 and recorded with the Will County Recorder on April 9, 2019 (Will County Recording No. R2019020106). The terms, conditions, and provisions of the Annexation Agreement, including all exhibits thereto, are affirmed by this Agreement, including but not limited to provisions pertaining to: the timing of demolition of existing structures, emergency access, school and park donations, sidewalks, shared use paths, establishment of a dormant special service area, declaration of covenants, conditions and restrictions, easements, Route 59 and Rollingridge Road traffic signal and intersection improvements, required right-of-way dedications, 103rd Street improvements, Route 59 improvements, surety, Outlot H and K grading and maintenance, and Master Plan Approvals.

4. **Building Permits.** Building permits for each PHASE of development of the SUBJECT PROPERTY shall not be issued by the CITY until after: (i) the final plat of subdivision for that PHASE has been recorded with the Will County Recorder; and (ii) the CITY has determined that sufficient improvements have been installed and are functioning to protect the health, safety, and welfare of the public. Notwithstanding the foregoing, the CITY may withhold building permits for the SUBJECT PROPERTY, or any portion thereof, as provided in the Annexation Agreement.

5. **Infrastructure Availability Charges and User Fees.** Upon a request for connection and service to the CITY'S water and/or sanitary system, OWNER AND DEVELOPER/RESIDENTIAL and OWNER AND DEVELOPER/CHURCH shall each pay for all infrastructure availability charges and user fees for their respective portion of the SUBJECT PROPERTY in accordance with Title 8 of the Naperville Municipal Code as amended from time to time, as are applicable to that portion of the SUBJECT PROPERTY for which connection and service is requested.

6. **Facility Installation Charges and User Fees.** Upon a request for connection and service to the City of Naperville electric system, the OWNER AND

DEVELOPER/RESIDENTIAL and OWNER AND DEVELOPER/CHURCH shall each pay for all Facility Installation Charges (FIC) and user fees for their respective portion of the SUBJECT PROPERTY in accordance with Title 8 of the Naperville Municipal Code as amended from time to time, as are applicable to that portion of the SUBJECT PROPERTY for which connection and service is requested.

7. Special Conditions.

7.1 Fees and Costs/Timing of Payments. OWNER AND DEVELOPER/RESIDENTIAL shall pay the following fees and costs which shall not be paid under protest or otherwise objected to:

7.1.1 **Engineering Review Fee – Phase 1A and 1B:** $65,424.18 (1.65% of the approved engineer's cost estimate). This fee shall be paid prior to recording the Final Plat of Subdivision for Wagner Farms Phase 1A or 1B, whichever is recorded first.

7.1.2 **Engineering Review Fee – Phase 2:** $29,088.20 (1.65% of the approved engineer's cost estimate). This fee shall be paid prior to recording the Wagner Farms Phase 2 Final Plat of Subdivision.

7.1.3 **Engineering Review Fee – Phase 3:** $10,134.65 (1.65% of the approved engineer's cost estimate). This fee shall be paid prior to recording the Wagner Farms Phase 3 Final Plat of Subdivision.

7.1.4 **Route 59 and Rollingridge Road Traffic Signal and Intersection Improvements.** OWNER AND DEVELOPER/RESIDENTIAL shall pay one hundred and seventy-five thousand dollars ($175,000.00) to the CITY to be used by the CITY toward the cost of the Traffic Signal and Intersection Improvements, in accordance with the terms of Section S.11 of the Annexation Agreement. This fee shall be paid prior to recording any Final Plat of Subdivision for any portion of the SUBJECT PROPERTY.

Except as otherwise provided herein or in the Annexation Agreement, the OWNER AND DEVELOPER/RESIDENTIAL and OWNER AND DEVELOPER/CHURCH shall also pay all fees and costs related to their portion of the SUBJECT PROPERTY required by the Naperville Municipal Code, as amended from time to time.

7.2 Financial Surety. OWNER AND DEVELOPER/RESIDENTIAL agrees that, in lieu of the hybrid letter of credit and performance bond permitted under S15.1.2 of the Annexation Agreement, it shall provide a letter of credit in compliance with the Naperville Municipal Code, as amended from time to time, for each PHASE of the project in the amount of 110% of the approved engineer's cost estimate for said PHASE, which guarantees the completion of

public improvements and soil erosion and sedimentation control for said PHASE of development of the SUBJECT PROPERTY ("Public Improvements"). If the provisions of the Annexation Agreement as to surety and the provisions of the Naperville Municipal Code, as amended from time to time, are in direct conflict with each other, the provisions of the Annexation Agreement shall control. Financial surety shall be received and approved prior to issuance of a site development permit for said PHASE. In addition, OWNER AND DEVELOPER/CHURCH shall provide financial surety in compliance with the Naperville Municipal Code, as amended from time to time, prior to CITY issuance of a site construction permit to OWNER AND DEVELOPER/CHURCH for the development of the WAGNER FARMS-CHURCH PROPERTY. If the provisions of the Annexation Agreement as to surety and the provisions of the Naperville Municipal Code, as amended from time to time, are in direct conflict with each other, the provisions of the Annexation Agreement shall control.

Prior to acceptance of the Public Improvements by the CITY, the OWNER AND DEVELOPER/RESIDENTIAL or OWNER AND DEVELOPER/ CHURCH, as may be applicable, shall provide the CITY with: (i) a maintenance surety for the Public Improvements in a form and from a source approved by the City Attorney and in conformity with the Naperville Municipal Code; and with (ii) a Bill of Sale for those Public Improvements as required by the City Engineer.

As to any surety, or maintenance surety, provided by OWNER AND DEVELOPER/RESIDENTIAL or OWNER AND DEVELOPER/CHURCH to the CITY hereunder, each respective OWNER agrees that in the event of a default under its surety or maintenance surety: (1) at no time shall the CITY be liable for attorneys' fees with respect thereto; (2) OWNER shall be liable to pay the CITY'S reasonable attorneys' fees and costs (in-house or outside counsel) in enforcement thereof; and (3) the list of circumstances set forth in such surety (including any exhibit thereto) as bases for default thereunder shall entitle the CITY to draw on said surety.

The financial surety for each PHASE shall be provided in the following amounts:

Phase 1A/1B: $4,361,611.98

Phase 2: $1,939,213.10

Phase 3: $675,643.10

7.3 Development of the Subject Property. OWNER AND DEVELOPER/RESIDENTIAL and OWNER AND DEVELOPER/CHURCH shall each construct the improvements related to the development of their respective portion of the SUBJECT PROPERTY, including but not limited to

Public Improvements, at their sole cost, unless otherwise specified herein, in compliance with the terms and conditions of the Ordinances and all exhibits thereto, including but limited to the terms of the Annexation Agreement; with the final engineering plans prepared by Cemcon, Ltd., dated February 7, 2019, last revised April 26, 2019 ("Final Engineering Plans"); with the Naperville Municipal Code, as amended from time to time; and with all other applicable laws and regulations. The Final Engineering Plans may be revised by an OWNER with respect to their portion of the SUBJECT PROPERTY with the written approval of the City Engineer.

8. General Conditions.

8.1 **Binding Effect.** CITY and OWNERS acknowledge and agree that the terms contained herein shall be binding upon and inure to the benefit of the CITY and the OWNERS and their respective successors, assigns, and transferees, and any subsidiary, affiliate or parent of the OWNERS as to any portion of the SUBJECT PROPERTY.

8.2 **Severability.** It is mutually understood and agreed that all agreements and covenants herein are severable and that in the event any of them shall be held to be invalid by any court of competent jurisdiction, this Agreement shall be interpreted as if such invalid agreement or covenant were not contained herein.

8.3 **Amendment.** The agreements, covenants, terms and conditions herein contained may be amended or modified only through the written mutual consent of the CITY and the OWNER or OWNERS of the portion or portions of the SUBJECT PROPERTY to which such amendments or modifications are applicable. If a modification of this Agreement would result in an amendment of the Annexation Agreement, the Annexation Agreement shall also be amended.

8.4 **Assignment.** This Agreement may not be assigned by either OWNER AND DEVELOPER/RESIDENTIAL or OWNER and DEVELOPER/CHURCH without the prior written consent of the CITY.

8.5 **Choice of Law and Venue.** This Agreement shall in all respects be subject to and construed in accordance with and governed by the laws of the State of Illinois. Venue for any action arising out of the terms or conditions of this Agreement shall be proper only in the Circuit Court for the Eighteenth Judicial Circuit, DuPage County, Illinois.

8.6 **Ambiguity.** If any term of this Agreement is ambiguous, it shall not be construed for or against any Party on the basis that the Party did or did not write it.

8.7 Recordation. This Agreement will be recorded with the Office of the Will County Recorder.

8.8 Term. Subject to the survival of any terms and provisions as provided herein and in the Annexation Agreement, the term of this Agreement shall run concurrently with the term of the Annexation Agreement.

8.9 Automatic Expiration. As noted in Recital D above, the OWNERS intend to subdivide the SUBJECT PROPERTY in Phase 1A, Phase 1B, Phase 2, and Phase 3. Upon approval of the City Council, four (4) ordinances approving final plats of subdivision, each of which shall incorporate this Agreement, shall be separately passed by the City Council (hereinafter "Subdivision Ordinances"). If one or more of said Subdivision Ordinances is not recorded with the Will County Recorder within seven (7) years from the date of approval thereof by the City Council, said Subdivision Ordinance(s), the final plat(s) of subdivision approved by said Subdivision Ordinance(s), and this Agreement, shall automatically expire and shall have no further force or effect without any action being taken by either Party hereto. Notwithstanding the foregoing, the seven (7) year timeframe may be extended as to one or more Phases by mutual written agreement of the OWNER(S) of that portion of the SUBJECT PROPERTY and the CITY.

8.10 Authority to Execute/OWNERS.

8.10.1 The undersigned warrants that he/she is the OWNER AND DEVELOPER/RESIDENTIAL of the WAGNER FARMS-RESIDENTIAL PROPERTY, or is the duly authorized representative of the OWNER AND DEVELOPER/RESIDENTIAL in the case of a corporation, partnership, trust, or similar ownership form which owns the WAGNER FARMS-RESIDENTIAL PROPERTY, and that the undersigned has full power and authority to sign this document and voluntarily agrees to the provisions set forth herein.

8.10.2 The undersigned warrants that he/she is the OWNER AND DEVELOPER/CHURCH of the WAGNER FARMS-CHURCH PROPERTY, or is the duly authorized representative of the OWNER AND DEVELOPER/CHURCH in the case of a corporation, partnership, trust, or similar ownership form which owns WAGNER FARMS-CHURCH PROPERTY, and that the undersigned has full power and authority to sign this document and voluntarily agrees to the provisions set forth herein.

8.11 Authority to Execute/CITY. The undersigned City Manager warrants that he has been directed to, and has the authority to, execute this Agreement. The undersigned City Clerk warrants that she has been directed to, and has the authority to attest the signature of the City Manager on this Agreement.

8.12 Effective Date. The effective date of this Agreement ("Effective Date") shall be the date upon which it is fully executed by all Parties hereto.

/ SIGNATURES ON FOLLOWING PAGES /

OWNER AND DEVELOPER/RESIDENTIAL:

[Signature]

Robert Getz
[Printed name]

VP Land Acquisition
[Title]

State of Illinois)
) ss
County of Will)

The foregoing instrument was acknowledged before me by Robert Getz this 29th day of April 2019.

Notary Public

Matt Goodman
Print Name

Given under my hand and official seal this 29th day of April, 2019.

-Seal-

Notary Public
My Commission Expires: 9/19/2020

OFFICIAL SEAL
MATTHEW G. GOODMAN
NOTARY PUBLIC, STATE OF ILLINOIS
My Commission Expires Sep 19, 2020

OWNER AND DEVELOPER/CHURCH:

The Compass Evangelical Free Church

[Signature]

Andrew Wojcik
[Printed name]

Director of Operations
[Title]

State of Illinois)
) ss
County of DuPage)

The foregoing instrument was acknowledged before me by Andrew Wojcki this 29th day of April 2019.

Notary Public

Kelly C. Arnquist
Print Name

Given under my hand and official seal this 29th day of April, 2019.

-Seal-

Notary Public
My Commission Expires: January 29, 2020

KELLY C ARNQUIST
OFFICIAL SEAL
Notary Public, State of Illinois
My Commission Expires
January 29, 2020

CITY OF NAPERVILLE

By: _____
Douglas A. Krieger
City Manager

ATTEST:

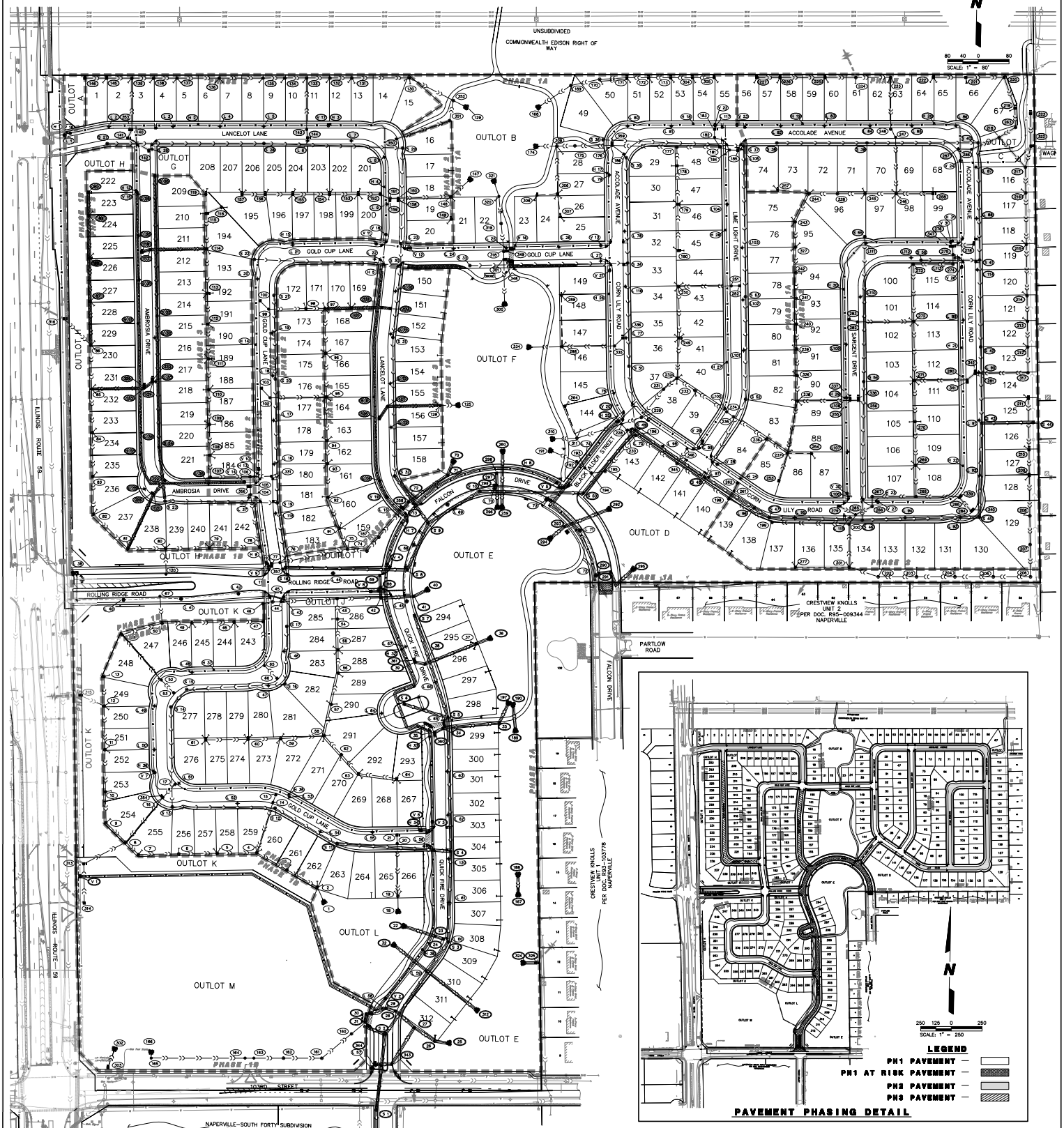
By: _____
Pam Gallahue, Ph.D.
City Clerk

Date: _____

PHASING EXHIBIT

FOR

WAGNER FARMS PHASES 1A, 1B, 2 & 3



PAVEMENT PHASING DETAIL

LEGEND

EXISTING	PROPOSED	DESCRIPTION
		STORM SEWER
		STORM MANHOLE
		CATCH BASIN
		INLET
		CLEANOUT
		SLOPE INLET BOX
		CHANNEL
		END SECTION
		SUMP DRAIN CONDUIT
		SANITARY SEWER
		SANITARY MANHOLE
		WATERMAIN
		WATER VALVE IN VAULT
		FIRE HYDRANT
		ADDITV LTD RD* MOUNTING HEIGHT w/6' ARM
		ADDITV LTD RD* MOUNTING HEIGHT w/10' ARM
	(No.)	SURROUNDING SYSTEM USED ON PLANS FOR SANITARY MANHOLE STRUCTURE IDENTIFICATION
	(S No)	SURROUNDING SYSTEM USED ON PLANS FOR SANITARY MANHOLE IDENTIFICATION
	(H No)	SURROUNDING SYSTEM USED ON PLANS FOR FIRE HYDRANT IDENTIFICATION
	(V No)	SURROUNDING SYSTEM USED ON PLANS FOR VALVE VAULT IDENTIFICATION
	(L No)	SURROUNDING SYSTEM USED FOR LIGHT POLE/STREET LIGHT IDENTIFICATION

PHASING LEGEND - UTILITIES

	STRUCTURE	PIPE
PH1	(X)	
PH1 AT RISK	(X)	
PH2	(X)	
PH3	(X)	

EXHIBIT G

EXHIBIT A

PREPARED FOR:
PULTE HOME COMPANY, LLC
1900 E. GOLF ROAD, SUITE 300
SCHAUMBURG, IL 60173
(847) 230-5400

PREPARED BY:
CEMCON, Ltd.
Consulting Engineers, Land Surveyors & Planners
2280 White Oak Circle, Suite 100
Aurora, Illinois 60502-9675
PH: 630.862.2100 FAX: 630.862.2199
E-Mail: cadd@cemcon.com Website: www.cemcon.com

DISC NO.: 402109 FILE NAME: PHASING
DRAWN BY: LAL FLD. BK. / PG. NO.: ----
COMPLETION DATE: 03-15-19 JOB NO.: 402.109
04-25-19/LAL REVISED PER CITY REVIEW COMMENTS DATED 4/8/19
04-22-19/LAL REVISED PER IN-HOUSE REVIEW

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