STATE OF ILLINOIS	
COUNTY OF DUPAGE	
CITY OF NAPERVILLE	:

# SUPPLEMENTAL PETITION TO THE NAPERVILLE CITY COUNCIL AND PLANNING AND ZONING COMMISSION FOR DEVELOPMENT APPROVAL

THE UNDERSIGNED Petitioner, Pulte Home Company LLC, a Michigan limited liability company (hereinafter the "Petitioner"), as the contract purchaser of the property legally described on Exhibit A (the "Property") respectfully submits this supplemental petition to the City of Naperville to, upon annexation of the Property pursuant to separate petition submitted by Weasel Enterprises, LLC: (i) zone the Property in the City's R3A Medium Density Multi-Family Residence District; (ii) approve a preliminary plat of subdivision; (iii) approval of a variance from the rear yard setback requirement; (iv) grant a variance from Section 6-6D-8 of Naperville's Municipal Code (hereinafter the "Code") to allow an increase in maximum building height.

## **BACKGROUND INFORMATION**

- 1. The owner of the Property is Weasel Enterprises, LLC, an Illinois limited liability company having an office located at 1037 Forest View Ct., Naperville, Illinois 60563 ("Owner").
- 2. Owner has separately filed a petition with the City of Naperville to annex the Property to the City of Naperville ("Annexation Petition"), which Annexation Petition is expressly contingent upon approval of the zoning relief outlined herein.
- 3. Petitioner, Pulte Home Company LLC, a Michigan limited liability company having an office at 1900 E. Golf Road, Suite 300, Schaumburg, Illinois 60173 is contract purchaser of the Property.
  - 4. The Property contain 4.749 acres and is located in unincorporated DuPage County.
  - 5. The Property is governed by the DuPage County Zoning Ordinance and is zoned I-

1 Light Industrial Zoning District.

6. The Property was originally developed for an industrial use in the late 1960's or

early 1970's, preceding the residential development of Columbia Estates (north) and Springhill

(east) of the Property.

7. The Property is improved with two permanent structures. A single-story metal

building is located along the Plank Road frontage. A two-story concrete and glass building is

located toward the rear of the Property. Asphalt and gravel parking or storage areas are located

proximate to the buildings.

8. The Property is presently occupied by a number of tenants who utilize the Property

consistent with the historical underlying industrial zoning designation.

9. The land uses surrounding the property are as follows:

i. North: R1A/R2 - Single Family Detached Homes

ii. East: R1B - Old Plank Park/ Single Family Detached Homes

iii. South: R3PUD/E1 – Cemetery/ Attached Single Family Homes

iv. West: I-1 – Industrial/Railroad

10. Petitioner submitted a Petition for Development Approval dated December 19,

2016 ("Original Petition"), which Original Petition requested certain zoning relief to permit the

development of the Property as a thirty-five (35) unit townhome development (the "Project").

11. Petitioner hereby submits this "Supplemental Petition" to grant relief from the

Naperville Municipal Code that was not originally addressed in the Original Petition and to

eliminate the front yard setback variance request.

12. Upon annexation of the Property to the City of Naperville, Petitioner respectfully

requests that the Property be zoned R3A, Medium Density Multiple-Family Residence District.

13. The proposed zoning meets the City standards as follows:

a. The amendment promotes the public health, safety, comfort, convenience and general

welfare and complies with the policies and official land use plan and other official

#### plans of the City; and

The Property is currently zoned I-1 Light Industrial District, in DuPage County. While this small pocket of industrial zoned property pre-dates much of the surrounding residential use, the area is now residential in character, and the remaining industrial uses are inconsistent with the predominant land use pattern. Today, the property is improved with two industrial buildings, one metal building and one concrete building, both of which show signs of deferred maintenance. The vacant land area outside of the buildings is largely used for storage purposes, including a large number of automobiles that may or may not be operational. The proposed development will eliminate this historic industrial use of the Property and continue the transformation of this area of town as a residential neighborhood.

Upon annexation, Petitioner respectfully requests the Property be zoned R3A. The proposed R3A zoning permits development at a density of up to eight (8) units per acre. This is consistent with the recommendations contained in the 2010 Plank Road Study which suggest that the Property be developed for medium density multi-family at up to eight (8) units per acre. Petitioner proposes to develop the Property with a thirty-five (35) unit townhome project. The proposed townhomes will act as a transitional residential use between existing low-density single family neighborhoods and the adjacent railway corridor. Additionally, the project will promote the general welfare by diversifying the housing stock proximate to the City's very busy Naperville Train Station.

b. The trend of development in the area of the subject property is consistent with the requested amendment; and

The clear trend of development in the area is for residential construction. The Property is located just north of Downtown Naperville and just east of the Naperville Train Station.

Downtown Naperville and the Naperville Train Station are major activity drivers in the local

community. Downtown Naperville is a thriving mixed-use community that has driven significant reinvestment in the surrounding residential neighborhoods. The Naperville Train Station is one of the most heavily utilized train stations on the Chicagoland Metra system and has similarly driven significant reinvestment in the residential neighborhoods surrounding the station. The Property will continue the trend of reinvestment in residential construction proximate to Downtown Naperville and the Naperville Train Station.

More proximate to the Property, the area immediately north and east of the Property was first developed in the 1980's and consists largely of detached single family homes. Today, new development generally consists of single family teardowns or small infill parcels which continue to diversify the residential product mix in the neighborhood. M/I Homes is building single family homes in a fourteen lot detached single family development known as Burlington Meadows. Epeius, Inc. is building attached single-family product in a ten unit subdivision known as Park's Edge. Ellsworth Street LLC is expected to commence construction of a 39 unit multi-family project this spring. Petitioner's proposed 35 unit attached single-family development will continue the trend of residential development in the area.

c. The requested zoning classification permits uses which are more suitable than the uses permitted under the existing zoning classification; and

The Subject Property is currently zoned I-1 Light Industrial District in DuPage County. There are a broad array of permitted uses within the I-1 district ranging from adult businesses to dairy processing, landscape contractor's storage yard and sheet metal shops. In general, the uses permitted within the light industrial district are not compatible or intended to occur within the confines of a broader residential neighborhood. The proposed R3A zoning would move the property to a residential designation that mirrors the broader land use pattern throughout the surrounding neighborhood.

The proposed R3A zoning designation for the Property is consistent with the City's Plank Road Study which was completed in December of 2010. The Plank Road Study designates the Property as "Medium-Density Residential (8 units per acre)." This designation was established to serve two primary purposes: i) to create a transition between existing residential neighborhoods and the adjacent railroad corridor, and ii) to create new residential product within close proximity (walking distance) to the Naperville Metra Station. The R3A zoning designation and incorporation of attached single family product along the railroad corridor mirrors a strategy utilized south of the railroad corridor where the Willow Creek townhome community similarly serves as a transition between the railroad corridor and single family residential further to the south.

d. The subject property has not been utilized under the existing zoning classification for a substantial period of time; and

The Property is presently utilized under the I-1 industrial zoning designation in DuPage County. However, existing structures are deteriorating and significant portions of the property are utilized merely for storage purposes. The existing use of the Property does not represent its highest and best use, nor is it compatible with the surrounding environment.

e. The amendment, if granted, will not alter the essential character of the neighborhood and will not be a substantial detriment to adjacent property.

The amendment, if granted, will not alter the essential character of the neighborhood. To the contrary, the amendment will enhance the essential character of the neighborhood by converting an old dirty industrial property to a modern walkable townhome community that will continue to develop the residential character of the area around the Naperville Train Station. The proposed townhome development will serve as a transition between the railroad corridor and adjacent low-density single family development. It will further diversify residential product type around the Naperville Train Station and continue the trend of reinvestment for residential development in the neighborhood.

- 14. Petitioner seek approval of the Preliminary Plat of Subdivision, a copy of which has been submitted herewith, to subdivide the Property into eight lots and one outlot.
- 15. The proposed subdivision meets the standards for a subdivision consistent with the standards set forth in the Code.
- 16. Petitioner seeks approval of a variance from the rear yard setback requirement established in the R3A zoning district.
  - 17. The proposed variance meet the standards for a variance as follows:
  - a. The variance is in harmony with the general purpose and intent of this Title and the adopted comprehensive master plan; and

Setback requirements may serve a variety of purposes. From a practical perspective, setbacks ensure proper separation between structures and create sufficient space to accommodate required utility installations. In plan development, setbacks serve to create a sense of symmetry within a neighborhood by providing some uniformity in the alignment and structure of buildings. Here, Petitioner proposes to reduce the required rear yard setback from twenty-five (25) feet to approximately 12'7" exclusively at the southwest corner of the building located on proposed lot two (2). The proposed variance is in harmony with the purpose and intent of the zoning ordinance in that it neither inhibits utility installations nor creates any incongruity in the broader neighborhood.

The proposed setback does not create any utility conflicts or issues with separation between buildings. The preliminary engineering plans submitted herewith depict the proposed layout of all roadways and utilities necessary to service both the development and the broader community. All of the utilities are reasonably accommodated between the right-of-way and within utility easements that will be incorporated into the documentation as part of the final plat process.

From a plan development standpoint, the proposed rear yard setback variance will not

create any incongruity in the broader neighborhood. The rear property line borders the railroad right-of-way and is not proximate to any physical improvements. Proximate to Lot 2, where the rear yard setback variance is proposed, the railroad right-of-way is extra wide and includes a 50' wide landscape buffer that is utilized for transitional grading between the Property and the actual train tracks. Ultimately, the building on Lot 2 will be located more than 100' from the actual train tracks and will sit approximately 20' above the grade of the train tracks thereby maintaining ample separation between uses. Moreover, there is no congruity that would be maintained or created along rear property line by imposing the applicable setback requirements.

b. Strict enforcement of this Title would result in practical difficulties or impose exceptional hardships due to special and unusual conditions which are not generally found on other properties in the same zoning district; and

The strict enforcement of setback requirement would result in practical difficulties due to some of the unique conditions associated with the Property. The Property is uniquely situated in the broader community due to its location, topography and configuration. The Property is bound on the north by a collector roadway. It is bound on the south by the railway corridor. The Property has nine different sides and no parallel property lines to help create any sense of congruity. The Property is approximately 240' deep on the west but nearly twice that depth on the east. The Property falls approximately 40' in elevation from Plank Road to the railroad tracks. Collectively, these natural conditions combine to make the property exceptionally difficult to develop. Additionally, the Property is encumbered by physical limitations associated with its historic use. The Property suffers from soil contamination associated with the historic industrial use of the Property and will require remediation though the Illinois Environmental Protection Agency as a condition of any development. Following remediation, any new development will require structural slabs to account for soil limitation and additional infrastructure will be required to handle possible vapor intrusion. Relief from the rear setback requirement will allow Petitioner to

maximize the developable area of the Property as a means of offsetting both the natural and other physical limitations associated with the Property.

c. The variance, if granted, will not alter the essential character of the neighborhood and will not be a substantial detriment to adjacent property.

The proposed variance, if granted, would not alter the essential character of the neighborhood nor will it be a substantial detriment to adjacent property. To the contrary, the proposed variance will foster a development that represents a significant investment in the community. An investment that will eliminate a historic industrial use within a broader residential neighborhood. An investment that will result in the environmental remediation of a dirty Property. The proposed development plan is consistent with the Plank Road study and will create a transitional residential use between the railroad and existing single family subdivisions. The proposed development plan is consistent with applicable density limitations (under 8 dwelling units per acre). The proposed development plan provides approximately 135% of the lot area required per dwelling unit in the R3A zoning district. Accordingly, the proposed development will improve the neighborhood consistent with the City's establish plan. The proposed variance does not negatively affect the plan nor is it inconsistent with the character of the neighborhood. As outlined above, while the area surrounding the Property is a well-defined residential neighborhood, it incorporates a variety of residential product types exhibiting no real uniformity in pattern. Accordingly, the proposed setback will not create any sense of a departure from a wellestablished pattern in the existing environment.

- 18. Petitioner seeks a variance from Section 6-6D-8 of the Code to allow segments of four (4) townhome buildings to exceed the thirty-five (35) foot height restriction in the R-3 zoning district.
  - a. The variance is in harmony with the general purpose and intent of this Title and the adopted comprehensive master plan; and

The variance is in harmony with the general purpose and intent of this Title and the adopted comprehensive master plan. The general purpose and intent of the Code's height restriction is to establish adequate standards for the provision of light, air and open space. Petitioner's proposed development will be uniform and consistent throughout. As with the vast majority of townhome developments, all buildings within the proposed development will be architecturally similar. Similarity in architecture design preserves property values and provides consistency throughout the development. Because of this, the proposed development establishes adequate standards for the provision of light, air and open space consistent with the purpose and intent of the Title.

Section 6-6D-8 of the R-3A zoning district provides for a maximum building height of thirty-five (35) feet. The Code defines "Height" of a building or structure to be the vertical distance measured from a datum point established by the average of the two (2) grades along each side lot line where the front yard line meets the side lot lines to the highest point of the roof surface or parapet, in case of a flat roof; to the deck roofline of a mansard roof; and to the mean level of the underside of the rafters between the eaves and the ridge of a gable, hip or gambrel roof. Application of this technical provision is particularly difficult in the context of a townhome development. Accordingly, for the purposes of townhome projects, the Naperville zoning administrator has applied and interpreted the measurement of "Height" to be taken from all four (4) elevations (instead of the average of two (2) grades) of each building, measured from grade to the mid-point of the peaked roof. With units stepping down due to grade, each "segment" must comply with the maximum permitted building height. Applying Naperville zoning administrator's interpretation of "Height" to Petitioner's proposed townhome development, a portion of four (4) townhome buildings will exceed the thirty-five (35) foot maximum building height by approximately two (2) feet. More specifically, the variance relates to the rear and side portion of buildings two (2), six

(6), seven (7), and eight (8). The limited portion of each building which exceeds the height restriction is depicted as a bold line on the preliminary engineering plans attached hereto and made a part hereof as **Exhibit** "B". Important to note, the approximate two (2) foot increase in building height for buildings two (2), and six (6) will occur on the side elevation. The increase in building height for Building seven (7) will occur on side and rear elevation. The affected portions each of these buildings face the train tracks to the south and because of this, the increase in building height will be unnoticeable to neighbors or the general public. The increased height of building eight (8) occurs at the rear of the building facing the western property line. Petitioner intends to provide fencing, shade, ornamental, and evergreen trees to buffer the building eight (8) at the property line and Plank Road. In fact, one would have to make a concerted effort to notice the variance request herein.

Petitioner respectfully requests that a variance be granted to permit the construction of townhomes as depicted on the proposed elevations. The variance requested herein arises from the fact the Property's existing topography is special and unusual. There is substantial grade difference from the front property line to the rear property line. The existing grade at the western front property line measures approximately seven hundred and forty one (741) feet while the southeastern rear property line measures approximately seven-hundred (700) feet. The grade difference between the front and rear property line is approximately forty-one (41) feet. Important to note, the existing grade condition was not caused by Petitioner but has been a condition of the Property for a substantial period time.

Due to the Property's existing special and unusual grade, a portion of buildings two (2), six (6), seven (7) and eight (8) is approximately two (2) feet lower at the rear and side of each building. Consequently, applying the zoning administrator's interpretation of building height at

these portions will yield a building height of approximately thirty-seven (37) feet instead of the maximum thirty-five (35). Important to note, that the increase in height is not caused by any change in building design or structure of the building, but is merely the result of the technical application of height measure in this case. The variance request will not interfere with the stated purpose of the zoning Title which is to provide adequate light, air, and open space. Instead the variance requested is in harmony with the general purpose and intent of the Title and only arises due to the unique topography which is special and unusual condition of the Property.

b. Strict enforcement of this Title would result in practical difficulties or impose exceptional hardships due to special and unusual conditions which are not generally found on other properties in the same zoning district; and

Strict enforcement of this Title would result in practical difficulties or impose exceptional hardships dues to special and unusual conditions which are not generally found on other properties in the same zoning district. As previously mentioned, the existing grade is a special and unusual condition of the Property which was not caused by any act of the Petitioner. Instead, the existing grade is a condition of the Property that has existed for a substantial period of time. Due to dramatic changes in grade throughout the Property, a segment of buildings two (2), six (6), seven (7) and eight (8) will measure slightly higher than the maximum allowed building height in the R-3 zoning district. Note that buildings one (1), three (3), four (4), and (5) will comply with the City's measurement of height notwithstanding that each building in the proposed development will be architecturally the same. It is merely a function of the falling grade at the rear and sides of each of the affected buildings which creates the variance condition. Strict enforcement of this Title would substantially negatively affect the viability of the townhome development causing Petitioner to incur significant expense in an effort change the existing grade.

c. The variance, if granted, will not alter the essential character of the neighborhood and will not be a substantial detriment to the adjacent property.

The variance, if granted, will not alter the essential character of the neighborhood and will not be a substantial detriment to the adjacent property. The variance for buildings two (2), six (6), seven (7), will be undetectable from the perimeter as the segment of the building affected is internal to the site and faces the train tracks. Building eight (8) is visible from Plank Road however, Petitioner intends to provide shade, ornamental, and evergreen trees along with fencing to provide a buffer from Plank Road and the adjacent property.

Additionally, the variance requested herein only affects a small segment of four (4) buildings. In total, only a portion of twelve (12) units is affected. The request is de minimis considering the development consists of thirty-five (35) units.

Petitioner's proposed townhome development will improve a parcel of land that currently contains old industrial buildings which have existed on the parcel for a substantial period of time. Petitioner's request will improve the character of the neighborhood by permitting the construction of townhomes consistent with the direction provided in the Plank Road Study.

WHEREFORE, by reason of the foregoing, the undersigned Petitioner requests the Planning and Zoning Commission and the Naperville City Council take the necessary steps to grant the Petitioner's request to: (i) annex the Subject Property into the City of Naperville and upon annexation zone the Subject Property to the R3A district; (ii) approve a preliminary/final plat of subdivision; (iii) approval of a variance from the rear yard setback requirement; (iv) grant a variance from Section 6-6D-8 of Naperville's Municipal Code (hereinafter the "Code") to allow an increase in the maximum building height; and (iv) approve any such other relief from the Naperville Municipal Code ("Code") as may be deemed necessary and appropriate to development the Property consistent with the plans submitted herewith.

	CAR		
RESPECTFULLY SUBMITTED this	( day of	MARCH	2017.

PETITIONER:

Rosanova & Whitaker, Ltd.
Attorneys for the Petitioner

## **EXHIBIT A**

LOT 3 OF TYSON'S ASSESSMENT PLAT OF PART OF THE NORTHEAST 1/4 OF SECTION 18, TOWNSHIP 38 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED MAY 13, 1954 AS DOCUMENT 716523 AND CONTAINED IN CERTIFICATE OF CORRECTION RECORDED OCTOBER 10, 1957 AS DOCUMENT 859357, IN DUPAGE COUNTY, ILLINOIS.

PIN NO: 08-18-207-003

# EXHIBIT B PRELIMINARY ENGINEERING PLANS

