

(Top 3 inches reserved for recording)

**MUNICIPAL UTILITY AND WATER SERVICES
EASEMENT AGREEMENT**

THIS MUNICIPAL UTILITY AND WATER SERVICES EASEMENT AGREEMENT (this “**Easement**”) is made and entered into effective _____, 2022 (the “**Effective Date**”), between the City of Saint Paul, a Minnesota municipal corporation and home rule charter city (the “**City**” or “**Grantor**”) and the Board of Water Commissioners of the City of Saint Paul, d/b/a Saint Paul Regional Water Services (“**SPRWS**” or “**Grantor**”; the City and SPRWS are collectively referred to herein as “**Grantors**”) and Pulte Homes of Minnesota LLC, a Minnesota limited liability company (“**Grantee**”). The City, SPRWS and Grantee are also collectively referred to herein as “**Parties**”.

RECITALS

WHEREAS, Grantee became the owner of a portion of certain real property situated in the City of Saint Paul, County of Ramsey, State of Minnesota, which such property is a part of that certain larger parcel of land consisting of approximately 122 acres which formerly contained a Ford car and truck assembly plant and is commonly known as the Ford Redevelopment Site and now known as “Highland Bridge” (the “**Redevelopment Area**”).

WHEREAS, Grantee has caused a portion of the Redevelopment Area to be subdivided into the lots, blocks and outlots shown on the plat known as Highland Bridge Rowhomes Third Addition, recorded as Document Number _____ in the Office of the County Recorder/Registrar of Titles for and in Ramsey County, Minnesota, as may be amended from time to time (the “**Rowhome Plat**”).

WHEREAS, the Rowhome Plat also created a perpetual forty foot (40’) municipal utility and water services easement in favor of the City (“**Municipal Utility Easement**”) and a thirty-foot (30’) wide municipal water services easement within the Municipal Utility Easement in favor of SPRWS (the “**SPRWS Easement**”). The Municipal Utility Easement and the SPRWS Easement extend through the following real property legally described in the Rowhome Plat as: Outlots A and B (collectively, the “**Pulte Property**”).

WHEREAS, the property on which the Municipal Utility Easement is located is currently intended to serve as a private alley, which provides vehicle and pedestrian ingress and egress to adjacent blocks and lots.

WHEREAS, rather than locate the City’s and SPRWS’s sewer and water, and other municipal utilities, in the rights-of-way for the lots in this part of the Redevelopment Area, the City, SPRWS, and Grantor

agreed that for many reasons the existing location of the Municipal Utility Easement was a better area for municipal utilities. Therefore, the Municipal Utility Easement excluded any and all other below-ground uses including any other non-City or non-SPRWS public or private utilities to be located within the Municipal Utility Easement, and excluded any and all above-ground structures that would in any manner impair or interfere with construction, reconstruction, inspection, operation, maintenance, repair, or replacement, or any related activities, (the activities listed hereinafter referred to as “O&M”) of the Municipal Utility Easement by the City or SPRWS.

THEREFORE, in consideration of the foregoing Recitals and the mutual promises, undertakings and covenants hereinafter set forth, and intending to be legally bound hereby, the Parties hereby agree as follows:

AGREEMENT

1. Recitals. The above Recitals are incorporated into this Easement by this reference, including the definitions set forth therein.
2. Grant of Easement.
 - a. Even though the City and SPRWS are identified as Grantors and Pulte as Grantee, for avoidance of doubt, all Parties are not granting and conveying easement rights to Other Utilities, which include utility service lines, such as cable, internet, gas, and electric services, (“**Other Utility Providers**”), and for related O&M activities (an “**Other Utility**” or, collectively, the “**Other Utilities**”).
 - b. The Grantee grants and conveys to the City and SPRWS the right to use any utility easements granted by Grantee, or its respective successors and assigns, on its real property, located adjacent to the Municipal Easement Area, for excavation and laydown by and for the City’s or SPRWS’s O&M, subject to and conditioned on the City or SPRWS restoring those areas (including, without limitation, restoring any landscaping or improvements therein) to their prior condition at the City’s or SPRWS’s own expense. For the avoidance of doubt, other than this limited, non-exclusive excavation and laydown right, section 2(b) by itself does not and is not intended to limit the rights of the Grantee to use, possess, or construct on its real property.
3. SPRWS Thirty Foot (30’) Easement. As described in the Recitals, the Rowhome Plat shows the forty-foot (40’) wide Municipal Utility Easement dedicated to the City and the thirty foot (30’) SPRWS Easement dedicated to SPRWS. For avoidance of doubt, the foregoing reduction by ten feet (10’) feet of the SPRWS Easement dimension does not apply to or affect the City’s Municipal Utility Easement rights. As between SPRWS, Grantee and Other Utilities, Grantee and Other Utilities have full and complete ownership responsibilities including construction, tie in to the SPRWS utility system and related O&M duties and responsibilities respecting such relinquished ten feet (10’) of the Municipal Utility Easement.
4. Location. Upon completion of any utility service line, the Other Utility must immediately provide an as-built drawing to the City, and to SPRWS if the utility service line lies within the 30-foot width of the SPRWS Easement, but no later than 10 business days after installation is complete.

5. Incorporating by Reference Utility Use of City Right of Way. The Other Utilities have no greater or additional rights except those expressed in this Easement. However, to provide some guidance to all Parties as well as symmetry in process and procedure as between the City's or SPRWS's utilities and Other Utilities located in the Municipal Utility Easement, this Easement incorporates by reference Minnesota Statutes Section 237.162, as amended; Minnesota Rules Chapter 7819, as amended; and Saint Paul City Code regarding utility use of City right-of-way ("**ROW**") and City approved franchise agreements, as such are amended from time to time. For instance, Other Utilities must apply for excavation/building permits and must pay permitting fees (and when appropriate, fines); and for example, Grantee or Other Utilities may require additional areas for excavation or installation, in addition to the Other Utility Easement Area, which needs and requests are governed similarly to such needs and requests in a ROW. In other words, subject to the sole discretion of the City or SPRWS, Grantee and/or Other Utilities may obtain approval for such use, subject to and conditioned upon the City's or SPRWS's approval under the same processes and similar conditions as such approvals are obtained in City ROWs.

6. Operations, Maintenance, Repair and Replacement and Related Activities. Notwithstanding anything to the contrary in this Easement, Grantee and each Other Utility will be 100% responsible for its own O&M expenses. Furthermore, if either the City or SPRWS needs a utility service line relocated or attended to in order for the City or SPRWS to undertake its own O&M work, the Other Utility must respond reasonably and expeditiously, and at its own expense. If Other Utility work is undertaken by the City or SPRWS after a reasonable notice with no response from Other Utility, said Other Utility will reimburse the City or SPRWS, plus a 10% service charge, for such work. Grantee will be completely and solely responsible for all its costs and expenses associated with exercise of its rights, duties, and obligations under this Easement, including its O&M costs and expenses, and including but not limited to, compliance with all relevant rules, laws, and/or regulations.

7. Encroachment. Grantee and Other Utilities will not allow construction or installation of buildings, structures, trees or any other objects within the Municipal Utility Easement and SPRWS Easement that would either obstruct or otherwise prohibit normal access to the City's or SPRWS's facilities therein or will prevent or prohibit the City or SPRWS from exercising their rights, respectively, under the Municipal Utility Easement or SPRWS Easement (as modified by this Easement). Absent a duly authorized and obtained permit applied and obtained in the same manner for an encroachment into or on a City ROW, as between the City or SPRWS and Grantee or Other Utilities, except for asphalt or other hard surfaces for ingress and egress and landscaping, Grantee and Other Utilities will not locate any structure, fixture, or personal property of any type within the Municipal Utility Easement or SPRWS Easement without first obtaining the applicable permit. In the event an Other Utility exercises its rights under this Easement, the Other Utility will minimize the amount of excavation and/or disruption and to clear away debris, with the understanding that the restoration and costs of such improvements will be the sole responsibility of the Other Utility. In the event Grantee or Other Utilities violate the non-encroachment prohibition, either the City or SPRWS may remove the encroachment and the Parties agree that the City and/or SPRWS will not be liable for any claims, including for conversion, interruption with business, or otherwise, in connection with such removal or towing; furthermore, all removal, replacement or modification costs for such encroachment will be borne solely by Grantee or Other Utility.

8. Permits and Fees. Any and all permits, fees, and fines applicable to Other Utilities within ROW will apply to the Municipal Utility Easement and SPRWS Easement unless expressly waived in writing or modified by this Easement.
9. Signs. Any and all traffic controlling signs must be submitted for review and approval by City in accordance with City ordinances, which approval will not be unreasonably withheld.
10. Reservations. The City and SPRWS each reserve and retain all its governmental authority. The City and SPRWS reserve and retain any and all other property and use rights in the Municipal Utility Easement.
11. Insurance. Each Other Utility must, at its sole cost and expense, obtain and continuously maintain insurance coverage at or above the tort liability cap as set forth in the Minnesota Statutes Chapter 466, as amended, with respect to its O&M in the Municipal Utility Easement for so long as: (i) the Other Utility, or its successor or assigns, has a possessory or use interest in the Municipal Utility Easement; or, (ii) any portion of the Municipal Utility Easement is within the control of the Other Utility. From time to time, at the reasonable request of the City or SPRWS, the Other Utility will furnish proof to the City or SPRWS that such insurance is in effect.
12. Release and Indemnification Covenants by Grantee. Grantee and Other Utilities hereby release, defend, indemnify, and hold harmless the City and SPRWS and their respective body members, officials, officers, servants and employees, agents, contractors, consultants, and legal counsel (collectively, the **"City Indemnified Parties"**):
 - a. from and against, any claims or demands for damages of any kind (including property or injury, death, loss, costs, fines, charges, and attorney's fees and costs);
 - b. occurring at, about or in connection with any portion of the Municipal Utility Easement or any improvements constructed thereon by Grantee or Other Utility or any acts or omissions of Grantee or Other Utility (including its contractors, subcontractors of any tier, and any party for which the foregoing are responsible) in connection with this Easement;
 - c. except to the extent such loss or damage is caused by the willful misrepresentation, gross negligence, or intentional misconduct of one or more of the City Indemnified Parties.
13. No Waiver. The failure of the City or SPRWS to enforce any of the terms or conditions in this Easement will not be deemed a waiver of any rights or remedies and any such right or remedy may be exercised from time to time and as often as may be deemed expedient or necessary. No waiver of the provisions of this Easement shall be effective unless in writing, executed by the party to be charged with such waiver. No waiver shall be deemed a continuing waiver or waiver in respect of any subsequent breach or default, either of similar or different nature, unless expressly stated in writing. No remedy reserved to the City or SPRWS is intended to be exclusive of any other available remedy or remedies unless otherwise expressly stated, but each and every such remedy will be cumulative and is in addition to every other remedy hereafter existing at law or in equity or by statute. In order to entitle the City and/or SPRWS to exercise any remedy reserved to it, it will not be necessary to give notice, other than such notice as may be required in Section 14.

14. Notices. Except as otherwise expressly provided in this Easement, a notice, demand or other communication under this Easement by any party to any other will be sufficiently given or delivered if it is (a) dispatched by registered or certified mail, postage prepaid, return receipt requested, (b) sent by recognized overnight courier (such as Federal Express), or (c) delivered personally, as follows:

If to a future grantee: The address of record for real property tax assessment notices with respect to the applicable portion of the Property.

If to Grantee: Pulte Homes of Minnesota LLC
7500 Flying Cloud Drive, Suite 670
Eden Prairie, MN 55344
Attn: Chad Onsgard
E-mail: chad.onsgard@pultegroup.com

With a copy to: Larkin Hoffman Daly & Lindgren Ltd.
8300 Norman Center Drive, Suite 1000
Bloomington, MN 55437
Attn: Ryan N. Boe
Email: rboe@larkinhoffman.com

If to the City: City of Saint Paul (Public Works Department)
700 City Hall Annex
25 West 4th Street
Saint Paul, MN 55102
Attn: Director of Public Works

City of Saint Paul (Public Works Department)
700 City Hall Annex
25 West 4th Street
Saint Paul, MN 55102
Attn: Right of Way Engineer

With a copy to: Office of the City Attorney
400 City Hall
15 West Kellogg Blvd.
Saint Paul, MN 55102
Attn: Public Works Asst. City Attorney

And a copy to: City of Saint Paul Office of Financial Services
700 City Hall
15 West Kellogg Blvd.
Saint Paul, MN 55102
Attn: Finance Director

If to SPRWS: Saint Paul Regional Water Services
1900 Rice Street

Saint Paul, Minnesota 55113
Attn: General Manager

or at such other address with respect to any such party as that party may, from time to time, designate in writing and forward to the other, as provided in this Section.

15. Third Party Beneficiary. All utilities with a franchise agreement with the City and in good standing automatically have Other Utility Easement rights under this Easement. Any person who has located a utility service line within the Other Utility Easement, by that action, is deemed to have accepted and, without exception, is subject to each and every obligation, covenant, representation, and term and condition of this Easement. Notwithstanding the above, the person does not have a right to use the Other Utility Easement until a duly authorized and issued permit from the City has been issued to the person.
16. Not a Public Dedication. Except for the rights specifically granted in this Easement, the Municipal Utility Easement and the SPRWS Easement, nothing in this Easement will be deemed to be a gift or dedication of any portion of the Property to the general public, or for any public use or purpose whatsoever.
17. Easement to Run with Land. This Easement will run with the land and be appurtenant to the Property and will be binding upon and inure to the benefit of the Parties hereto, and their successors and assigns.
18. Enforcement of Easement. Without limiting the remedies of the Parties, this Easement may be enforced by proceedings in equity to restrain any violation or compel specific performance.
19. Successors and Assigns. The easements granted hereby, and each reservation, covenant, condition and restriction contained in this Easement, including the benefits and burdens, will run with the land and be binding upon the successors and assigns of Grantee, such that the provisions of this Easement will burden the Property, including, without limitation, the Municipal Utility Easement and the SPRWS Easement, notwithstanding any sale or transfer of the Property, or any portion thereof, to a third party.
20. Amendment. Except as otherwise provided herein, the provisions of this Easement will not be amended, terminated or deleted, except by an instrument in writing duly executed by the City, SPRWS and Grantee (or the successor of Grantee) on whose portion of the Property the amendment pertains.
21. Governing Law, Jurisdiction, Venue and Waiver of Trial by Jury. All matters, whether sounding in tort or in contract, relating to the validity, construction, performance, or enforcement of this Easement will be controlled by, interpreted and determined in accordance with the laws of the state of Minnesota without regard to its conflict and choice of law provisions. Any litigation arising out of this Easement will be venued exclusively in Ramsey County District Court, Second Judicial District, state of Minnesota and will not be removed therefrom to any other federal or state court. The Parties hereby consent to personal jurisdiction and venue in the foregoing court. The Parties hereby waive trial by jury for any litigation arising out of this Easement.

22. Attorneys' Fees. Subject to the exclusion of costs set forth in Section 6 above, the prevailing party will be entitled to reasonable attorneys' fees and costs.
23. No Waiver of Governmental Immunity and Limitations on Liability. Nothing in this Easement will in any way affect or impair the City's or SPRWS's immunity or the immunity of the City's or SPRWS's employees, consultants and contractors, whether on account of official immunity, legislative immunity, statutory immunity, discretionary immunity or otherwise. Nothing in this Easement will in any way affect or impair the limitations on the City's or SPRWS's liability or the liability of their employees, consultants and independent contractors. By entering into this Easement, the City and SPRWS do not waive any rights, protections, or limitations as provided under law and equity for the City or SPRWS or of their respective employees, consultants and contractors.
24. Regulatory Authority and Data Practices Act. Nothing in this Easement will be construed to limit or modify the City's or SPRWS's regulatory authority. All data created, collected, received, stored, used, and maintained by the City or SPRWS are subject to the requirements of Minnesota Statutes Chapter 13, as amended.
25. Severability. If any provisions hereof will be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portions will not in any way be affected or impaired.
26. Counterparts. This Easement may be executed in one or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties have caused this Easement to be duly executed on or as of the date first above written.

[The remainder of this page intentionally left blank; signature pages to follow]

**Signature Page to Municipal Utility and Water Services Easement Agreement
between City, SPRWS and Pulte**

CITY OF SAINT PAUL

By: _____
Its Mayor

By: _____
Its City Clerk

By: _____
Its Director, Office of Financial Services

APPROVED AS TO FORM

Assistant City Attorney

STATE OF MINNESOTA)
) ss
COUNTY OF RAMSEY)

The foregoing instrument was acknowledged before me this ___ day of _____, 2022, by Melvin Carter / Jamie Tincher, the Mayor or Deputy Mayor of the City of Saint Paul on behalf of the City.

Notary Public

STATE OF MINNESOTA)
) ss
COUNTY OF RAMSEY)

The foregoing instrument was acknowledged before me this ___ day of _____, 2022, by Shari Moore, the City Clerk of the City of Saint Paul on behalf of the City.

Notary Public

STATE OF MINNESOTA)
) ss
COUNTY OF RAMSEY)

The foregoing instrument was acknowledged before me this ___ day of _____, 2022 by John McCarthy, the Director, Office of Financial Services of the City of Saint Paul on behalf of the City.

Notary Public

**Signature Page to Municipal Utility and Water Services Easement Agreement
between City, SPRWS and Pulte**

**SAINT PAUL REGIONAL WATER SERVICES
BY ITS BOARD OF WATER COMMISSIONERS**

By: _____
Its President

By: _____
Its Secretary

By: _____
Its Director, Office of Financial Services

APPROVED AS TO FORM

Assistant City Attorney

STATE OF MINNESOTA)
) ss
COUNTY OF RAMSEY)

The foregoing instrument was acknowledged before me this ____ day of _____, 2022, by _____, the President of the Board of Water Commissioners on behalf of Saint Paul Regional Water Services.

Notary Public

STATE OF MINNESOTA)
) ss
COUNTY OF RAMSEY)

The foregoing instrument was acknowledged before me this ____ day of _____, 2022, by _____, the Secretary of the Board of Water Commissioners on behalf of Saint Paul Regional Water Services.

Notary Public

STATE OF MINNESOTA)
) ss
COUNTY OF RAMSEY)

The foregoing instrument was acknowledged before me this ____ day of _____, 2022 by John McCarthy, the Director, Office of Financial Services of the City of Saint Paul on behalf of Saint Paul Regional Water Services.

Notary Public

PULTE HOMES OF MINNESOTA LLC

By: _____
Name: _____
Title: _____

STATE OF MINNESOTA)
) ss
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2022, by _____, the _____ of Pulte Homes of Minnesota LLC, a Minnesota limited liability company, on behalf of the limited liability company.

Notary Public

This Instrument Drafted By:
Office of the City Attorney
400 City Hall
15 West Kellogg Blvd.
Saint Paul, MN 55102
Attn: Public Works Asst. City Attorney