



Alameda County

FEB 13 2003

7 February 2003

Environmental Health

Alameda County Department of Environmental Health  
Attn: Eva Chu, Hazardous Material Specialist  
1131 Harbor Bay Parkway  
Alameda, CA 94502-6577

Subject: Verification of Time Constraints by Pulte Homes and Land Sellers

Enclosure: (1) Pgs 1,2 & 16 of Baalam Brother's Purchase & Sale Agreement  
(2) Pgs 2, 12 & 16 of Richard Becker's Purchase & Sale Agreement

Dear Ms. Chu,

It is my understanding that you requested documentation to prove that the relevant parties in the 1300 & 1350 Powell Street transactions in Emeryville are working under contractual time constraints with actual dollar concerns. Accordingly, I've enclosed the pertinent sections of the Purchase and Sale Agreement. The Agreement is a binding contract on the part of both sellers and buyers. Because of the sensitive nature of this information, I ask that you limit its circulation. We request that you do not disclose or discuss the contents of this material to the owners and their agents. Each seller (Dick Becker and The Baalam Brothers) has a separate contract structure.

Sections 1.6 & 1.7 of Pg 2 and Sections 1.5 & 1.6 of Pgs 1 & 2 discusses "deposits." These deposits represent money that Pulte Homes has expended to keep the contract viable. It is customary in most land purchase deals. The sum of the deposit is \$500,000.

Sections 1.11 on Pg 2 of both Purchase & Sale Agreements discuss the "outside closing date." This date represents the final date in which the buyer can purchase the properties without incurring extension costs and penalty payments. In both cases, the outside closing date has expired (based on professional consultation and Pulte's experience, a full year was considered more than enough to complete this work). In the same section is the extension provision and is elaborated by Section 13.2 on Pg 16 for both Agreements. The sum of the extension is \$140,000.

The total of these two is \$640,000. A portion of the fund is applicable to the cost of the land and a portion is not. The portion that is not is considered "sunk cost," or money that cannot be retrieved or applied for the benefit of the buyer.

Pulte Home Corporation  
7031 Koll Center Parkway, Suite 150  
Pleasanton, California 94566  
925.249.3200 925.485.0291

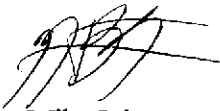
Sections 9.4 & 9.5 of Pg 12 discuss other payments. The total paid to date is \$30,000 and incurs by \$10,000 on a monthly basis. All these payments are sunk costs.

Pulte Homes has independently contributed (does not include sellers contributions) approximately \$750,000 on the environmental remediation and resultant backfill operations. If this agreement does not close, we do not recoup the money. Further, we are paying 18% interest on the aggregate cost of the project, which is approximately \$85,000 per month. This is significant because my development schedule indicates that we have lost at least 90 days of production due to the unusually long remediation process. The more significant cost ramification is that we begin selling the homes at least 90 days later, which will be a loss in the hundreds of thousands.

The costs described above does not take into account other expenditures not directly related to the remediation.

Pulte Homes is optimistic. Based on consultation with the city, consultants and our strong desire to build high-density housing, we feel that this project will happen. However, as homebuilders, we cannot build homes unless we have the case closure letter. Pulte Homes, with the combined efforts of environmental consultants, contractors, city officials, and property sellers have met or exceeded the clean up standard as set forth by the County. Therefore, I think it is more than reasonable for us to expect the NFA letter in a timely fashion.

Regards,



Mike Kim  
Project Manager, Land Development

Alameda County

FEB 13 2003

Environmental Health

PURCHASE AND SALE AGREEMENT  
AND PRELIMINARY ESCROW INSTRUCTIONS

THIS PURCHASE AND SALE AGREEMENT AND PRELIMINARY ESCROW INSTRUCTIONS (this "Agreement") is made as of the Agreement Date as defined below, by and between BALAAM BROTHERS, A GENERAL PARTNERSHIP ("Seller") and PULTE HOME CORPORATION, A MICHIGAN CORPORATION ("Pulte"). Seller and Pulte are collectively referred to as "parties" or individually as a "party."

RECITALS

A. Seller is the owner of improved real property located in the City of Emeryville (the "City"), County of Alameda (the "County"), State of California, at 1350 Powell Street consisting of approximately 33,400 square feet, as specifically described in Exhibit "A," attached hereto and incorporated herein (the "Property").

B. Pulte desires to purchase and Seller desires to sell the Property under the terms and conditions contained in this Agreement.

The parties agree as follows:

DEFINITIONS

1. Defined Terms. The following terms have the meaning as set forth:

1.1 Property. The "Property" includes the real property described in Exhibit "A" and all of Seller's right, title and interest in and to all easements, mineral rights and oil and gas rights, water, water rights, air rights, building allocations, development rights and privileges and other intangible personal property associated with such real property and all improvements and personal property located on such real property at the Close of Escrow.

1.2 Agreement Date. The "Agreement Date" is the date of the last party's execution of this Agreement, as evidenced by the date inserted after the party's signature line, below.

1.3 Purchase Price. The "Purchase Price" is One Million Seven Hundred Thirteen Thousand Dollars (\$1,713,000).

1.4 Terms of Payment. The "Terms of Payment" of the Purchase Price are all cash at the Close of Escrow (defined below), with Pulte receiving credit for monies actually paid into Escrow (defined below) and released to Seller prior to Close of Escrow and which by the terms of this Agreement are to be credited against the Purchase Price.

✱ 1.5 The First Deposit. The "First Deposit" is One Hundred Thousand Dollars (\$100,000) in the form of a check or wire transfer, which shall be deposited by Pulte into Escrow within three (3) days after the Agreement Date.

★ 1.6 The Second Deposit. The "**Second Deposit**" is One Hundred Thousand Dollars (\$100,000) in the form of a check or wire transfer to be deposited into Escrow within three (3) days after the City's Final Approval (defined below in Section 8.1) of a tentative subdivision map for Pulte's intended residential use for the Property (the "**Tentative Map**") or 180 days after the Agreement Date, whichever is sooner.

★ 1.7 The Extension Deposits. The "**Extension Deposits**" are the two deposits of Fifty Thousand Dollar (\$50,000) each in the form of a check or wire transfer to be deposited into Escrow for each thirty-day extension of the Outside Closing Date as provided in Section 13.2.

1.8 The Deposits The "**Deposits**" are the First Deposit, the Second Deposit, the Extension Deposits, if made, and any payments that are released to Seller, which pursuant to the terms of this Agreement are applied towards the Purchase Price.

1.9 Feasibility Period The "**Feasibility Period**" starts on the Agreement Date and ends at 5:30 p.m. Pacific time on the date that is Sixty (60) days after the Agreement Date.

1.10 Feasibility Disapproval Notice. The "**Feasibility Disapproval Notice**" is written notice by Pulte to Seller given in accordance with Section 4.1 hereof, stating that Pulte does not intend to proceed with the purchase of the Property. The Feasibility Disapproval Notice must be delivered to Seller (as described in Section 16.7) no later than 5:30 p.m. on the date that the Feasibility Period expires ("Feasibility Period Expiration Date"), or the Feasibility Disapproval Notice shall have no force or effect and Pulte shall be obligated to purchase the Property.

★ 1.11 Outside Closing Date. The "**Outside Closing Date**," is the last date on which the Close of Escrow is to occur, which is ten (10) days after Final Approval by the City of Emeryville of a final subdivision map for Pulte's intended residential use (the "**Final Map**") for the Property or ten (10) months after the Agreement Date, whichever is sooner, unless extended as provided in Section 13.2.

1.12 Close of Escrow. The "**Close of Escrow**" or "**Closing**" is when the Grant Deed conveying title of the Property to Pulte is recorded in the Official Records of the County and Sellers have received all payments to which they are entitled pursuant to this Agreement and any written amendments and addenda thereto that have been executed by all Parties.

1.13 Title Company The "**Title Company**" is Chicago Title Company, One Kaiser Plaza, Suite 745, Oakland, CA 94612 Attention: Kris Owens, Escrow Officer, whose fax number is (510) 465-0738.

1.14 Title Report. The "**Title Report**" is the preliminary title report issued by Title Company, dated as of January 3, 2002, order number 912016-MG, attached hereto as **Exhibit "B."**

AGREEMENT FOR PURCHASE AND SALE

terminate this Agreement for failure of the condition set forth in Section 11.1.6 if such NFA is not issued by Close of Escrow, in such instance Seller shall not be in default hereunder or for any reason so long as Seller complies with Section 11.2. Seller has presented Pulte with documentation in the Property Information that the Remediation Work is estimated at \$50,000, but Seller will not be obligated to expend more than \$75,000 for such remediation work. If the NFA is not issued by the Close of Escrow, Pulte may terminate this Agreement upon written notice to Seller, and the provisions of Section 5 shall apply except that Pulte will be entitled to the prompt refund of the Deposits. Seller shall have no further obligations to Pulte with respect to Remediation Work or Hazardous Materials other than as specifically set forth in this Section 12.4, now or forever including after Close of Escrow.

13. Close of Escrow.

13.1 Closing Date. Subject to the satisfaction or Pulte's express written waiver of all Pulte's Closing Conditions described above, the Close of Escrow shall occur on the Outside Closing Date. The date on which the Close of Escrow occurs or is to occur is the "**Closing Date.**"

\* 13.2 Closing Date Extensions. Pulte may extend the Outside Closing Date for up to two (2) thirty-day periods by depositing into Escrow, before the expiration of the Outside Closing Date then in effect, an Extension Deposit of an additional Fifty Thousand Dollars (\$50,000) for each 30-day extension, which will be immediately released to Seller. The Extension Deposits will be nonrefundable once made, but applicable to the Purchase Price at the Close of Escrow.

13.3 Grant Deed. Title to the Property shall be conveyed by a grant deed in a form reasonably acceptable to and approved in writing by Pulte, without any reservation or exception that is not a Permitted Exception (the "**Grant Deed**"). The documentary transfer tax information will be submitted with the Grant Deed by a separate statement not to be recorded and not on the face of the Grant Deed.

13.4 Deposit of Funds into Escrow. As a condition precedent to Pulte's obligation to deposit Pulte's funds to close escrow, Seller shall, at least two (2) business days before the Closing Date, deposit or cause the deposit of the fully executed Grant Deed, the Assignment (described in the next Section), and any other instruments for which Seller's signature is necessary in order to close the escrow. On the later of the business day before the Closing Date or the business day after Seller has complied with the preceding sentence, Pulte shall deposit into Escrow the balance of the Purchase Price, and all other funds and documents necessary to close the Escrow.

13.5 Assignment of Personal Property. At least two business days before the Close of Escrow, Seller will sign and have their signatures acknowledged before a notary public, two counterparts of the Assignment and Bill of Sale in the form attached hereto as **Exhibit "H"** (the "**Assignment**"). At the Close of Escrow, Title Company will deliver one fully executed Assignment to Pulte.

1.2 Agreement Date. The "**Agreement Date**" is January 25, 2002, the date of the last party's execution of the Original Agreement, as evidenced by the date inserted after the party's signature line, on the Original Agreement.

1.3 Execution Payment. The "**Execution Payment**" is the Ten Thousand Dollars (\$10,000) payment by Pulte to Sellers the receipt of which is acknowledged by Seller, which payment shall be non-refundable and shall not be applicable to the Purchase Price.

1.4 Purchase Price. The "**Purchase Price**" is Two Million Six Hundred Seventy Thousand Dollars (\$2,670,000).

1.5 Terms of Payment. The "**Terms of Payment**" of the Purchase Price are all cash at the Close of Escrow, with Pulte's receiving credit for monies previously paid to Seller which by the terms of this Agreement are to be credited against the Purchase Price

★ 1.6 The First Deposit. The "**First Deposit**" is One Hundred and Fifty Thousand Dollars (\$150,000) in the form of a check or wire transfer, which has been deposited by Pulte into Escrow.

★ 1.7 The Second Deposit. The "**Second Deposit**" is One Hundred and Fifty Thousand Dollars (\$150,000) in the form of a check or wire transfer to be deposited into Escrow within three (3) business days after the expiration of the Feasibility Period if Pulte has not given the Feasibility Disapproval Notice.

1.8 The Deposits. The "**Deposits**" are the First Deposit, the Second Deposit, and any payments which pursuant to the terms of this Agreement are made applicable to the Purchase Price.

1.9 Feasibility Period. The "**Feasibility Period**" starts on the Agreement Date and ends at 5:30 p.m. Pacific time on April 30, 2002.

1.10 Feasibility Disapproval Notice. The "**Feasibility Disapproval Notice**" is written notice by Pulte to Seller given in accordance with Section 4.1 hereof, stating that Pulte does not intend to proceed with the purchase of the **Property**. To have any effectiveness whatsoever, the Feasibility Disapproval Notice must be given by Pulte no later than the expiration of the Feasibility Period.

★ 1.11 Outside Closing Date. The "**Outside Closing Date**," is the last date on which the Close of Escrow is to occur, which is ten (10) days after Final Approval by the City of Emeryville of a final subdivision map for Pulte's intended residential use (the "**Final Map**") for the Property or twelve (12) months after the Agreement Date, whichever is sooner, unless extended as provided in Section 13.2.

any challenge, appeal or legal action or if such challenge, appeal or legal action has been commenced, such matters are finally resolved to Pulte's reasonable satisfaction (the "Final Approval").

9.2 Authority. Seller hereby grants Pulte permission and authority to proceed with and complete Subdivision Processing for the Property. All costs, fees, and expenses arising out of or incurred in connection with Pulte's Subdivision Processing shall be paid by Pulte and Pulte shall indemnify and hold Seller harmless with respect thereto. Pulte shall commence the Subdivision Processing no later than the end of the Feasibility Period and shall diligently pursue the Subdivision Processing thereafter. Pulte will post any subdivision improvement bonds required to obtain the Final Approval of the Final Map. Pulte may process one Tentative Map for the Property and the Balaam Property as one project, if Pulte so elects. Pulte agrees that Pulte will continue to process the Tentative Map during the Remediation Work.

9.3 Seller's Cooperation. At no cost to Seller other than the costs of Seller's employees, agents and consultants who may provide services exclusively to Seller, Seller agrees to cooperate fully with Pulte with the Subdivision Processing. Such cooperation shall include, but not be limited to the prompt execution upon Pulte's reasonable request of all necessary documents, applications and maps including, but not limited to, the Tentative Map and the subdivision improvement agreement for the Final Map, the attendance by Sellers or their designated agents at meetings and hearings as Pulte shall reasonably request, and if applicable, obtaining the signatures of all Trust Deed holders as required by the Subdivision Processing. Contingent upon the Close of Escrow, Seller shall, at no cost to Pulte, make such dedications to public use and grant such easements to the City, other governmental agency, district or utility company as may be required for the development of the Property and the recordation of the Final Map.

✱ 9.4 Pulte's Diligence – Tentative Map. Pulte shall have one hundred and twenty (120) days from April 30, 2002 to obtain approval of the Tentative Map. In the event that Pulte is unable to obtain approval of the Tentative Map prior to the expiration of that one hundred and twenty (120) day period, Pulte shall pay to the Seller the sum of Ten Thousand Dollars (\$10,000) for each subsequent thirty (30) day period (prorated, if appropriate) until the Tentative Map is approved or until the Close of Escrow, whichever is sooner. All such payments shall be made within three (3) business days of the commencement of each such thirty (30) day period. All payments made pursuant to this Section 9.4 shall be non-refundable and shall apply to the Purchase Price.

✱ 9.5 Pulte's Diligence – Final Map. Pulte shall have ninety (90) days from the date that the Final Approval of the Tentative Map receives its final approval from the City, to secure the City's final approval of the Final Map. In the event that Pulte is unable to obtain approval of the Final Map prior to the expiration of that ninety (90) day period, Pulte shall pay to the Seller the sum the sum of Ten Thousand Dollars (\$10,000) for each subsequent thirty (30) day period (prorated, if appropriate) until the Final Map is approved or until the Close of Escrow, whichever first occurs. All such payments shall be made within three (3) business days of the commencement of each such thirty (30) day period. The payments made pursuant to this Section 9.5 shall be non-refundable and shall not apply to the Purchase Price.

12.2 Best Efforts to Satisfy Conditions. All of the conditions contained in Section 12.1, are referred to as "**Pulte's Closing Conditions.**" Each party who may have reasonable control over the satisfaction of such conditions shall use that party's reasonable best efforts to satisfy such conditions before the Outside Closing Date. If by the Closing Date, such condition is still not satisfied through no fault of Pulte, then Pulte may either waive such condition by giving Seller written notice and close the Escrow or terminate this Agreement by giving Seller written notice and the Provisions of Section 5 shall apply, except that the Deposits and any other amount paid to Seller will be immediately refunded to Pulte.

13. Close of Escrow.

13.1 Closing Date. Subject to the satisfaction or Pulte's express written waiver of all Pulte's Closing Conditions described above, the Close of Escrow shall occur on the Outside Closing Date. The date on which the Close of Escrow occurs or is to occur is the "**Closing Date.**"

\* 13.2 Extensions of the Outside Closing Date. Pulte may extend the Closing Date for a maximum of two (2), thirty (30) day periods by providing written notice of each such extension to Seller and to the Title Company five (5) days in advance of the commencement of the extension period, and simultaneously depositing into Escrow the sum of twenty thousand dollars (\$20,000) for each thirty (30) day extension. Each said deposit shall immediately be released to Seller, shall be non-refundable, and shall not apply to the Purchase Price.

13.3 Grant Deed. Title to the Property shall be conveyed by a grant deed in a form reasonably acceptable to and approved in writing by Pulte, without any reservation or exception that is not a Permitted Exception (the "**Grant Deed**"). The documentary transfer tax information will be submitted with the Grant Deed by a separate statement not to be recorded and not on the face of the Grant Deed.

13.4 Deposit of Funds into Escrow. As a condition precedent to Pulte's obligation to deposit Pulte's funds to close escrow, Seller shall, at least two (2) business days before the Closing Date, deposit or cause the deposit of the fully executed Grant Deed, the Assignment (described in the next Section), and any other instruments for which Seller's signature is necessary in order to close the escrow. On the later of the business day before the Closing Date or the business day after Seller has complied with the preceding sentence, Pulte shall deposit into Escrow the balance of the Purchase Price, and all other funds and documents necessary to close the Escrow.

13.5 Assignment of Personal Property. At least two business days before the Close of Escrow, Seller will sign and have their signatures acknowledged before a notary public, two counterparts of the Assignment and Bill of Sale in the form attached hereto as **Exhibit "G"** (the "**Assignment**"). At the Close of Escrow, Title Company will deliver one fully executed Assignment to Pulte.



14 February 2003

Alameda County Department of Environmental Health  
Attn: Eva Chu, Hazardous Material Specialist  
1131 Harbor Bay Parkway  
Alameda, CA 94502-6577

Subject: Reconfirmation of Time Constraints by Pulte Homes and Land Sellers

Reference: Pulte Homes letter dated 7 Feb 03

Enclosure: Pg 1 of Purchase and Sale Agreement, Section B.

Dear Ms. Chu,

Please reference the previous letter. Sections 1.11 on Pg 2 of both Purchase & Sale Agreements discuss the "outside closing date." This date represents the final date in which the buyer can purchase the properties without incurring extension costs and penalty payments. In both cases, the outside closing date has expired (1yr after the Agreement date of January 25, 2002).

Regards,

Mike Kim  
Project Manager, Land Development



7031 Koll Center Parkway, Suite 150  
Pleasanton, CA 94566-3281

Phone: 925.249.3280

Fax: 925.485-0391

**Fax**

**To:** Eva Chu

**Fax:** 510-337-9335

**Company:**

**Phone:**

**From:** Mike Kim

**Date:** 2/14/03

**Re:**

**Pages:** 3 - Including cover

**COMMENTS:**

The date explanation – please keep this information confidential.

Regards,

Mike Kim

The information contained in this facsimile is confidential and may also be subject to the attorney client privilege or may constitute privileged work product. The information is intended only for the use of the individual or entity to whom it is addressed. If you are not the intended recipient, or the agent or employee responsible to deliver it to the intended recipient, you are hereby notified that any use, dissemination, distribution or copying of this communication is strictly prohibited. If you have received this facsimile in error, please immediately notify us by telephone, and return the original message to us at the address above via the U.S. Postal Service. Thank you.

## RESTATED PURCHASE AND SALE AGREEMENT AND PRELIMINARY ESCROW INSTRUCTIONS

THIS RESTATED PURCHASE AND SALE AGREEMENT AND PRELIMINARY ESCROW INSTRUCTIONS (this "Agreement") is dated for referenced purposes as of April 17, 2002, by and between RICHARD I. BECKER AND JULIA BECKER, husband and wife ("Seller") and PULTE HOME CORPORATION, A MICHIGAN CORPORATION ("Pulte"). Seller and Pulte are collectively referred to as "parties" or individually as a "party."

### RECITALS

A. Seller is the owner of improved real property located in the City of Emeryville (the "City"), County of Alameda (the "County"), State of California, at 1326 Powell Street, but commonly referred to as 1300 Powell Street as specifically described in Exhibit "A," attached hereto and incorporated herein (the "Property").

B. Seller has agreed to sell and Pulte has agreed to purchase the Property upon the terms and conditions contained in that Purchase and Sale Agreement and Preliminary Escrow Instructions bearing an Agreement Date of January 25, 2002 (the "Original Agreement").

C. The parties amended the Original Agreement by the First Amendment dated February 27, 2002 (the "First Amendment"), the Second Amendment dated April 1, 2002 (the "Second Amendment"), and the Third Amendment dated April 12, 2002 (the "Third Amendment").

D. The parties intend to amend, restate and replace the Original Agreement as amended by the First Amendment, the Second Amendment and the Third Amendment, with this Agreement, and Pulte desires to purchase and Seller desires to sell the Property under the terms and conditions contained in this Agreement.

The parties agree as follows:

### DEFINITIONS

1. Definitions. The following terms have the meaning as set forth:

1.1 Property. The "Property" includes the real property described in Exhibits "A" and all of Seller's right, title and interest in and to all easements, mineral rights and oil and gas rights, water, water rights, air rights, building allocations, development rights and privileges and other intangible personal property associated with such real property and all improvements and personal ~~property located on such real property at the Close of Escrow.~~