EXHIBIT 10.6  
  
 LIMITED LIABILITY COMPANY AGREEMENT  
 OF PALM COVE DEVELOPERS. LLC  
  
 THIS LIMITED LIABILITY COMPANY AGREEMENT (this "AGREEMENT") of PALM COVE  
DEVELOPERS, LLC (the "Company") is made and entered into effective as of the  
19th day of January, 2005 ("Effective Date"), by and between ASHTON TAMPA  
RESIDENTIAL, LLC, a Nevada limited liability company ("Ashton") and M/I HOMES OF  
TAMPA LLC, a Florida limited liability company ("M/I"). M/I and Ashton are  
sometimes referred to herein collectively as "Members" and individually as a  
"Member."  
  
 RECITALS  
  
 WHEREAS, Ashton and Pulte Home Corporation entered into that certain  
Agreement for Sale of Land (the "Pulte Contract") for the purchase and sale of  
certain real and other related property subject to the Pulte Contract (defined  
therein as the "Property") (The Pulte Contract is attached hereto as Exhibit "A"  
and incorporated by reference herein) and;  
  
 WHEREAS, as contemplated by that certain Letter Agreement ("Letter  
Agreement") dated as of December 22, 2004, by and between Ashton and M/I, Ashton  
assigned the Pulte Contract to Company and the Company acquired the Property  
(the "Property Closing"); and  
  
 WHEREAS, as further contemplated by the Letter Agreement, Company, Ashton  
and M/I are entering into this Agreement to consummate M/I's subscription for  
one-half (i.e., 50%) of the total equity or membership interests in and to the  
Company and to set forth certain terms and conditions applicable to the  
development of the Property by Company, the distribution of finished lots to the  
Members and other applicable terms and conditions related to the business  
affairs of the Company and the development of the Property; and  
  
 NOW, THEREFORE, the Members, by the execution and delivery of this  
Agreement, set forth the agreement for the Company under the laws of the State  
of Florida upon the terms and subject to the conditions of this Agreement.  
  
 1. DEFINITIONS. All capitalized terms not defined in this Agreement shall  
have the meaning ascribed to them in the Pulte Contract. When used in this  
Agreement, the following terms shall have the meanings set forth below:  
  
 (a) "ACT" shall have the meaning ascribed to it in Section 2.1. All  
references herein to sections of the Act shall include any corresponding  
provisions of succeeding law.  
  
 (b) "AFFILIATE" shall mean, when used with reference to a specified  
Person, any Person who controls, is controlled by or is under common control  
with the specified Person.  
  
 (c) "AGREEMENT" shall mean this Limited Liability Company Agreement, as  
originally executed and as amended from time to time.  
  
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 (d) "APPROVED BUSINESS PLAN" means collectively, after submission and  
approval as described herein, the following: (i) a pro-forma budget and  
development plan for the Property (the "Project") in accordance with the Pulte  
Contract, the Development Agreement (defined in Section 1.(o) hereof,) and this  
Agreement (the "Project Budget and Plan") and (ii) a Member capital contribution  
plan for the capital contributions by the Membere for the construction of the  
Project by the Company (the "Project Contribution Plan"), as each of the same  
may be amended from time to time in accordance with this Agreement. The  
Day-to-Day Manager shall endeavor to prepare and provide for M/I's approval the  
applicable Project Budget and Plan and the Project Contribution Plan within  
fifteen (15) days after the Effective Date. M/I shall endeavor to approve such  
Project Budget and Plan and the Project Contribution Plan submitted by the  
Day-to-Day Manager within fifteen (15) days of M/I's receipt of the submitted  
Project Budget and Plan and Project Contribution Plan; provided, the parties  
intend to work together as reasonably possible in preparing and reviewing all  
matters applicable to the Approved Business Plan (as defined in the following  
sentence). Upon each party's written approval of the Project Budget and Plan and  
Project Contribution Plan, such plans shall be considered and referred to herein  
as the "Approved Project Budget and Plan" and the "Approved Project Contribution  
Plan," and collectively shall be considered and referred to herein as the  
"Approved Business Plan." The Approved Business Plan is intended to be the  
overall plan and budget for the planning, development, and construction of the  
Project, including the distribution of finished lots to the Members, the  
projection and timing of annual Project expenditures, including, without  
limitation, development costs, construction costs, and maintenance costs, all of  
which shall be set forth in detail with each category of expense listed as a  
separate line item and a preliminary cost analysis for the Project. Such  
expenses shall be further separately delineated into two major categories of  
line item expenses as follows: (a) those line item expenses constituting  
"Operating Costs" and (b) those line item expenses constituting "Development  
Costs." The parties acknowledge that the Approved Business Plan will require  
updating or modification during the term of the Project as a result of changes  
to projected and actual costs, permitting conditions, etc. The Day-to-Day  
Manager shall regularly consult with and seek the input of the other Member in  
connection with the Day-to-Day Manager's updating of the Approved Business Plan.  
The Day-to-Day Manager shall use its commercially reasonable efforts to cause  
the Project to be developed, constructed, operated and disposed of substantially  
in accordance with the Approved Business Plan as it is updated and approved from  
time to time, including, without limitation, the line items contained therein.  
Subject to the approval rights set forth in Section 5.2 (a), below, and the  
obligation of the Day-to-Day Manager to maintain the originally Approved  
Business Plan as a comparative measure of how well the Company actually  
performed in comparison to the such originally Approved Business Plan, the  
Day-to-Day Manager shall update the Approved Business Plan as follows; (1) the  
Approved Project Budget and Plan shall be updated on not less than a semi-annual  
basis and the (2) the Approved Project Contribution Plan shall be updated every  
fiscal quarter. No update, modification or amendment of the Approved Business  
Plan (or any component budget item or plan thereof) shall be effective unless  
and until approved by all Members, subject to Section 5.5(c).  
  
 (e) "ARTICLES" shall mean the Articles of Organization of the Company  
as filed with the Secretary of State of the State of Florida, as the same may be  
amended from time to time by the approval of the Members.  
  
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 (f) "AVAILABLE CASH" shall mean all cash and cash equivalents of the  
Company on hand and in financial institutions or depositories and cash  
equivalents, on the date of any proposed distribution, after payment or  
provision for payment of all debts and liabilities of the Company then due  
(including, without limitation, debts and liabilities to Members who are  
creditors of the Company and payments then due under third-party loans to the  
Company), provision for reasonable working capital reserves and payment or  
provision for payment of operating expenditures, all as reasonably determined by  
the Day-to-Day Manager and approved by the Members, subject to Section 5.5(c).  
Available Cash shall not include Capital Contributions of the Members.  
  
 (g) "BASE RATE" means the commercial loan rate of interest announced  
publicly from time to time by Bank of America, N.A. (or any successor thereto)  
in Tampa, Florida as such bank's "reference rate" or "prime rate" as from time  
to time in effect.  
  
 (h) "CAPITAL ACCOUNT" shall mean a capital account established for each  
Member to which such Member's respective Capital Contributions shall from time  
to time be credited, which shall be maintained in accordance with the provisions  
of Section 704(b) of the Code and the Treasury Regulations promulgated  
thereunder.  
  
 (i) "CAPITAL CONTRIBUTIONS" shall mean the Initial Contributions and  
any additional contributions contributed to the Company by each Member in  
accordance with Section 3 of this Agreement.  
  
 (j) "CODE" shall mean the Internal Revenue Code of 1986, as amended  
from time to time.  
  
 (k) "COMPANY" shall mean the limited liability company. Palm Cove  
Developers, LLC, created on December 22,2004 and governed by this Agreement.  
  
 (l) "DATE OF VALUE" shall have the meaning ascribed to it in  
Section 12.  
  
 (m) "DAY-TO-DAY MANAGER" shall mean Ashton or any other Person(s) that  
succeeds to it in that capacity with the consent of the other Member.  
  
 (n) "ENGINEERING AND PRE-DEVELOPMENT COSTS" shall mean those pre- and  
post-formation engineering and pre-development costs incurred by or on behalf of  
a Member to contract for the Property and conduct the engineering and  
pre-development work for the Project, such as consulting fees and costs and  
filing, investigatory and regulatory fees and costs, plus any additional similar  
costs. To the extent the foregoing are paid by a Member in the ordinary course  
of business on or prior to the Property Closing, they shall be referred to  
herein as the "Paid Engineering and Pre-Development Costs," as more particularly  
set forth on EXHIBIT "B" attached hereto. As provided herein, a Member shall  
receive an initial contribution credit and Capital Account credit equal to the  
amount paid by each respectively of the Paid Engineering and Pre-Development  
Costs. The Company shall then assume and be responsible for paying  
  
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those Engineering and Pre-Development Costs other than the Paid Engineering and  
Pre-Development Costs.  
  
 (o) "FINISHED LOT(s)" shall mean a residential lot developed by the  
Company in accordance with the Pulte Contract, that certain Development  
Agreement by and between Pulte and Company executed as part of the Property  
Closing (the "Development Agreement"), this Agreement and all applicable  
restrictions, governmental requirements and Laws, and that has (i) a recorded  
plat that is acceptable to both Members with a copy of such recorded plat  
delivered to both Members, (ii) public sanitary sewer lines extended to a  
boundary of the lot with taps installed, (iii) public potable water lines  
extended to a boundary of the lot with taps installed, (iv) installed stormwater  
drainage lines and related facilities required by applicable Laws to serve the  
lot, with all stormwater ponds and related facilities serving such lines and  
facilities completed, (v) installed curbs and paved streets serving the lot that  
are within a publicly dedicated right-of-way, (vi) conduits to accommodate  
underground electric lines sufficient to service the lot extended to a boundary  
of the lot with the applicable electric company having extended service to the  
lot, (vii) graded in accordance with lot grading and drainage plans previously  
approved by both Members and graded materially in accordance with the elevations  
required for each lot on such plans, (viii) not been determined to be within the  
"100 Year Flood Plane" and (ix) been compacted to not less than ninety five  
(95%) modified xxxxxxx, maximum density (AASHTO T-180) and otherwise to such  
standards as are applicable for the types of construction contemplated by each  
Member and (x) all other work necessary to allow development and the subsequent  
use by homeowners of the intended residential improvements on the lot completed  
in accordance with all Laws (including, but not limited to, the issuance of the  
applicable building permit and certificate of occupancy for such lot) and any  
recorded covenants.  
  
 (p) "LAWS" means all federal, state and local laws, moratoria,  
initiatives, referenda, ordinances, rules, regulations, standards, orders,  
judicial decisions, common law and other governmental, quasi-governmental and  
utility company requirements (including those relating to the environment,  
health and safety, or disabled persons).  
  
 (q) "LIQUIDATING DISTRIBUTION AMOUNT" shall have the meaning ascribed  
to it in Section 12.  
  
 (r) "MAJOR DECISION" shall have the meaning ascribed to it in  
Section 5.  
  
 (s) "MEMBER" shall mean each Person who (a) is an initial signatory to  
this Agreement or has been admitted to the Company as a Member in accordance  
with the express provisions set out in this Agreement and (b) has not resigned,  
withdrawn, been expelled or, if other than an individual, dissolved.  
  
 (t) "MEMBER LOAN" shall mean any authorized loan made by a Member to  
the Company during the term hereof.  
  
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 (u) "MEMBERSHIP INTEREST" shall mean a Member's entire right, title and  
interest in, to and against the Company, the Project and the profits, losses,  
capital and distributions of the Company, the right to vote on or participate in  
the management and the right to receive information concerning the business and  
affairs, of the Company.  
  
 (v) "OFFERING NOTICE" shall have the meaning ascribed to it in  
Section 12.  
  
 (w) "PAID ENGINEERING AND PRE-DEVELOPMENT COSTS" shall have the meaning  
provided above in the definition of Engineering and Pre-Development Costs.  
  
 (x) "PERCENTAGE INTEREST" shall mean fifty percent (50.0%) for M/I and  
fifty percent (50.0%) for Ashton, as adjusted pursuant to this Agreement. Each  
Member's Percentage Interest shall equal the ratio of such Member's Capital  
Account relative to the aggregate amount of all Capital Accounts.  
  
 (y) "PERSON" shall mean an individual, general partnership, limited  
partnership, limited liability company, corporation, trust, estate, real estate  
investment trust association or any other entity or combination of Persons.  
  
 (z) "PURCHASE PRICE" shall have the meaning ascribed to it in  
Section 12.  
  
 (aa) "REGULAR MEETING" shall have the meaning ascribed to it in  
Section 4. (bb) "RESPONDING MEMBER" shall have the meaning ascribed to it in  
Section 12.  
  
 (cc) "SPECIAL MEETING" shall have the meaning ascribed to it in  
Section 4.  
  
 (dd) "TRANSFER" shall have the meaning ascribed to it in Section 9.  
  
 2. ORGANIZATIONAL MATTERS.  
  
 2.1 FORMATION OF COMPANY. The Company has been formed pursuant to the  
provisions of the Florida Limited Liability Company Act, Florida Statutes  
Chapter 608, as the same may be amended from time to time (the "Act"), and shall  
be governed by the terms and conditions contained in this Agreement. The terms  
"Member" and "Members" include the Members and their respective permitted  
successors and assigns as members in the Company.  
  
 2.2 NAME. The business of the Company shall be conducted under the name of  
"Palm Cove Developers, LLC" or any name mutually agreed upon by the Members.  
  
 2.3 TERM. The term of the Company commenced on December 22, 2004 (the  
"Commencement Date") and shall continue until the Company is dissolved as  
provided herein.  
  
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 2.4 CHARACTER OF BUSINESS. The express, limited and only purpose for which  
the Company is formed is, and the business of the Company shall be, to acquire  
the Property and to develop, improve, and distribute the Finished Lots to the  
Company's Members as described herein. The Company shall have the power to do  
and perform all things necessary for, connected with or arising out of such  
activities and shall have the power to take such actions as may be necessary or  
appropriate to accomplish such purposes and conduct such business. The Company  
shall not engage in any other business without the prior written consent of the  
Members. No Member shall have the authority to bind the other Member in any  
capacity other than as a Member the of the Company, and nothing in this  
Agreement shall create a relationship between the Members other than for the  
purposes set forth in this Agreement.  
  
 2.5 NAMES AND ADDRESSES OF MEMBERS. The names of the Members are as shown  
above. The addresses of the Members are set forth hereinafter.  
  
 2.6 PRINCIPAL PLACE OF BUSINESS. The principal place of business of the  
Company shall be located at 000 X. Xxxxxxxxx Xxxxxxxxx, Xxxxx 0000, Xxxxx,  
Xxxxxxx 00000, and may be relocated with the approval of all the Members to any  
location within Florida.  
  
 2.7 REGISTERED OFFICE AND REGISTERED AGENT.  
  
 (a) For purposes of the Act, the registered office of the Company is  
000 X. Xxxxxxxxx Xxxxxxxxx, Xxxxx 0000, Xxxxx, Xxxxxxx 00000. The registered  
office of the Company may be changed from time to time with the approval of the  
Members; provided, any replacement of the Day-to-Day Manager shall automatically  
be deemed the approval of a change in the registered office of the Company to  
that of the address of the new Day-to-Day Manager.  
  
 (b) For purposes of the Act, the Company's registered agent for service  
of process is Xxxxxxx X. Xxxxxx, Esq., who, in addition to the Company, shall  
provide a copy of each such notice to each Member. The registered agent of the  
Company may be changed from time to time with the approval of the Members;  
provided, any replacement of the Day-to-Day Manager shall automatically be  
deemed the approval of a change in the registered agent of the Company to that  
of the new Day-to-Day Manager.  
  
 2.8 TRADE NAME AFFIDAVITS. The Company will file such trade or fictitious  
name affidavits as may be necessary or desirable in connection with the  
formation, existence and operation of the Company (including those filings  
required in any jurisdiction where the Company owns or operates property).  
  
 2.9 QUALIFICATION. The Company will promptly apply for authority to  
transact business in those jurisdictions where it is required or elects to do  
so. The Company will file such other certificates and instruments as may from  
time-to-time be necessary or desirable in connection with its formation,  
existence or operation.  
  
 2.10 MANAGER-MANAGED. The Company shall be manager-managed by the Day-to-  
Day Manager.  
  
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 3. CAPITAL CONTRIBUTIONS, LOANS AND FUNDING OF PROJECT COSTS.  
  
 3.1 INITIAL CAPITAL CONTRIBUTION BY M/I. On or before the date that is  
one (1) business day following the Members' execution and delivery of this  
Agreement (or such other date as agreed to in writing by the Members), M/I shall  
pay to Ashton in readily available federal funds Five Million Nine Hundred  
Fifteen Thousand Five Hundred Sixty-six and 46/ 100 U.S. Dollars ($5,915,566.46)  
(the "M/I Membership Interest Purchase Price") to acquire one-half (i.e., 50%)  
of the total equity and Membership Interests in the Company, such that M/I's  
Percentage Interest shall be 50%, and to reimburse Ashton for one half (i.e.,  
50%) of the aggregate of the Paid Engineering and Pre-Development Costs, closing  
costs, title and escrow fees and premiums and prorations paid by Ashton on or  
before the Effective Date. The M/I Membership Interest Purchase Price, less the  
amount to reimburse Ashton for one half (i.e., 50%) of the aggregate of the Paid  
Engineering and Pre-Development Costs, closing costs, title and escrow fees and  
premiums and prorations paid by Ashton on or before the Property Closing, is  
intended to be 50.0% of the Purchase Price for the Property paid to Pulte to  
acquire the Property. As part of M/I's payment of the M/I Membership Interest  
Purchase Price, the M/I Deposit (as defined in the Letter Agreement) shall be  
paid by the Escrow Agent (as defined in the Letter Agreement) to Ashton and  
credited against the M/I Membership Interest Purchase Price. All amounts paid  
under this Section 3.1 by M/I, including the M/I Membership Interest Purchase  
Price, shall be credited to M/I's Capital Account upon the date of such payment  
and the Members intend that on the date of such payments by M/I, Ashton's and  
M/I's Capital Accounts shall be equal. As part of M/I's acquisition of its  
Membership Interest, Ashton shall execute and deliver to M/I an assignment of  
such Membership Interest in form and substance reasonably acceptable to Ashton  
and M/I.  
  
 3.2 ADDITIONAL CAPITAL CONTRIBUTIONS. Except as otherwise provided below  
in this Section 3.2, no Member shall be obligated to contribute additional  
capital to the Company. Each Member, upon written call therefor (the "Capital  
Call Notice") by the Day-to-Day Manager, shall promptly contribute to the  
Company, in proportion to its respective Percentage Interest, additional Capital  
Contributions (each, an "Additional Capital Contribution") in the event there  
are insufficient funds to pay costs and expenses which are due and payable and  
are in accordance with the Approved Project Budget and Plan. Capital Call  
Notices shall only be made in accordance with the Approved Business Plan. In  
addition to the foregoing, the Day-to-Day Manager shall reasonably consider and  
consult with the non-managing Member on any request by the non-managing Member  
to make a Capital Call Notice. Upon receipt of a Capital Call Notice delivered  
pursuant to this Section 3.2, each Member shall have seven (7) business days to  
make its share of the Additional Capital Contribution required thereby. If a  
Member ("Non-Contributing Member") fails to fund to the Company its pro rata  
share of any Additional Capital Contribution (a "Cash Deficit"), then the other  
Member ("Contributing Member"), provided such Contributing Member has funded all  
amounts required of such Contributing Member, shall have the right, but not the  
obligation, to elect to do the following (which, except as provided in Section  
5.5(c), shall be the sole and exclusive remedies of such Contributing Member  
against such Non-Contributing Member):  
  
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 (a) DEFICIT LOAN. Fund the Cash Deficit to the Company, in which event the  
amount so funded shall constitute a loan from the Contributing Member to the  
Non-Contributing Member ("Deficit Loan"). The Non-Contributing Member shall  
receive a credit to its Capital Account in the amount of such Deficit Loan. Each  
Deficit Loan shall be an obligation with recourse and shall bear interest at the  
per annum rate of four hundred (400) basis points over the Base Rate prevailing  
on the date such loan is made, compounded monthly, and shall be due and payable  
no later than upon demand (the "Due Date"). Until such Deficit Loan is paid in  
full, all fees, payments and distributions otherwise payable to the  
Non-Contributing Member shall be deemed to be paid or distributed to the  
Non-Contributing Member for Company tax and accounting purposes, but such fees,  
payments or distributions shall actually be paid or distributed directly to the  
Contributing Member in repayment of such Deficit Loan, with such funds being  
applied first to reduce any interest accrued on such Deficit Loan and then to  
reduce the principal amount of such Deficit Loan. If such Deficit Loan and all  
accrued interest thereon is not paid by the Due Date, the Contributing Member  
may elect to (i) convert the outstanding principal amount of the Deficit Loan  
and the accrued and unpaid interest thereon to capital of the Contributing  
Member, thereby diluting the Non-Contributing Member's Percentage Interest as  
detailed in Section 3.2(b) (the "Dilution Contribution"), (ii) exercise the  
buy/sell provisions of Section 12 pursuant to Section 3.2(c), or (iii) extend  
the Due Date of the Deficit Loan for an additional period of time.  
  
 (b) DILUTION. If a Contributing Member elects to convert the principal  
amount of the Deficit Loan and the accrued interest thereon into a Dilution  
Contribution in accordance with Section 3.2(a), the Capital Account of the  
Members shall be adjusted such that the Non-Contributing Member's Capital  
Account shall be decreased by amount due on the Deficit Loan and the  
Contributing Member's Percentage Interest shall be similarly increased, with the  
Members' Percentage Interests properly adjusted.  
  
 (c) BUY/SELL. Rather than make or continue a Deficit Loan as provided in  
Section 3.2(a), a Contributing Member shall have the right to invoke the  
provisions of Section 12, and the Non-Contributing Member shall be considered,  
for purposes of Section 12, to be in default hereunder.  
  
 3.3 MEMBER LOANS. Except with the prior consent of all Members, no Member  
shall be obligated or authorized to lend or advance money to the Company. To the  
extent a Member Loan is made by a Member to the Company pursuant to this  
Agreement, it shall be made without personal liability to any of the Members and  
shall be unsecured. The unpaid principal balance of the Member Loan shall bear  
interest at the Base Rate announced at the time of the making of the Member  
Loan, not to exceed the maximum rate permitted by law. The Company shall pay in  
full (i) the accrued interest on any such Member Loan and then (ii) the  
principal amount of any such Member Loan, prior to any cash distributions  
otherwise required or permitted pursuant to this Agreement to any of the  
Members.  
  
 3.4 THIRD-PARTY LOANS AND GUARANTEES. It is the intention of the Members  
that the Company will not seek third-party financing for the development and  
improvement of the Project. However, the Day-to-Day Manager and the non-managing  
Member shall, pursuant to  
  
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Section 5.1(c), regularly consult regarding the Approved Business Plan and the  
need for and mutually satisfactory terms, if any, of third-party financing for  
the second phase of the Project. If the Members do not agree on the need for, or  
the terms or conditions of, third-party financing, then no such third-party  
financing shall be obtained. The Members' failure to agree upon any third-party  
financing shall not invoke the provisions of Section 14.10(b).  
  
 3.5 CAPITAL CONTRIBUTIONS IN GENERAL. Except as otherwise expressly  
provided in this Agreement or as may otherwise be agreed to in writing by the  
Members (a) no part of the Capital Contributions of any Member may be withdrawn  
by such Member, (b) no Member shall be entitled to receive interest on its  
Capital Contributions, (c) no Member shall have the right to demand or receive  
property, other than Finished Lots and except as otherwise provided herein, in  
return for its Capital Contributions and (d) no Capital Contributions or loan  
made by any Member to the Company shall increase its Percentage Interest.  
  
 4. MEMBERS.  
  
 4.1 LIMITED LIABILITY. Except as otherwise specifically provided herein,  
no Member shall be personally liable under any judgment of a court, or in any  
other manner, for any debt, obligation, or liability of the Company, whether  
that liability or obligation arises in contract, tort, or otherwise.  
  
 4.2 ADMISSION OF ADDITIONAL MEMBERS. No additional Members shall be  
admitted to the Company unless approved by all of the Members.  
  
 4.3 WITHDRAWALS OR RESIGNATIONS. No Member may withdraw or resign from the  
Company without the prior written approval of all other Members.  
  
 4.4 REMUNERATION TO MEMBERS. Except as otherwise authorized in, or  
pursuant to, this Agreement, no Member is entitled to remuneration for acting in  
the Company business, including, without limitation, the Day-to-Day Manager of  
the Company.  
  
 4.5 MEMBERS ARE NOT AGENTS. Pursuant to Section 5.1, the day-to-day  
management of the Company is vested in the Day-to-Day Manager. Except as  
expressly provided in this Agreement, no Member, acting solely in the capacity  
of a Member, is an agent of the Company, nor can any Member in such capacity  
bind, or execute any instrument on behalf of, the Company.  
  
 4.6 VOTING RIGHTS. The Members shall have the voting, approval or consent  
rights provided in this Agreement.  
  
 4.7 MEETING OF THE MEMBERS.  
  
 (a) MEETINGS. Unless otherwise agreed to by the Members, regular  
meetings of the Members shall be held not less often than monthly at the office  
of the Day-to-Day Manager or such other place in Hillsborough or Pasco County as  
the Members shall mutually determine (in each case, the "Regular Meeting"). Such  
Regular Meetings may be held  
  
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telephonically. In addition to any Regular Meetings, any Member may call a  
special meeting ("Special Meeting") by giving at least four (4) days (if the  
meeting is to be held in person) or two (2) days (if the meeting is held  
telephonically) oral or written notice to the other Member. The notice shall  
specify the place, date and hour of the meeting and the general nature of the  
business to be transacted. If the place of any scheduled meeting is inconvenient  
to any Member, such Member may require by at least one (1) business day's oral  
or written notice to the other Member that such meeting be held telephonically.  
  
 (b) PURPOSE AND EFFECT. The Day-to-Day Manager shall endeavor to  
prepare a written agenda for all Regular Meetings and deliver the same to each  
Member prior to such meeting; provided, however, each Member shall be entitled  
to add any matter it elects to such agenda at or before such meeting. The Member  
calling a Special Meeting shall prepare a written agenda for such meeting and  
deliver the same to the other Member prior to such meeting; provided, however,  
each Member shall be entitled to add any matter it elects to such agenda at or  
before such meeting. The Day-to-Day Manager shall be responsible for having  
written minutes taken at each meeting (including each telephone conference  
meeting) of the Members, which shall be sent to each Member within seven (7)  
business days following such meeting. Whenever in this Agreement the consent or  
approval of a Member is required, such consent or approval may be given without  
a meeting if a writing signed by such Member evidences the same. Furthermore,  
the Members may reach decisions regarding any matter which requires the approval  
of all Members without a meeting if the decision is approved in writing by all  
of the Members.  
  
 5. MANAGEMENT AND CONTROL OF THE COMPANY.  
  
 5.1 MANAGEMENT OF THE COMPANY BY DAY-TO-DAY MANAGER.  
  
 (a) Subject to the restrictions set forth in this Agreement, the  
Day-to-Day Manager shall be the manager of the Company and shall use its  
commercially reasonable efforts consistent with customary practices in the  
industry utilized by top-tier residential land developers on projects which are  
similar in type and size to the Project (the "Standard of Care") to manage and  
administer the day-to-day business and affairs of the Company and to implement  
the Approved Business Plan, all on the terms set forth herein. Ashton shall be  
the Day-to-Day Manager of the Company unless and until it is replaced pursuant  
to Section 5.5. The Day-to-Day Manager shall at all times perform its duties and  
responsibilities in compliance with all Laws and this Agreement (including,  
without limitation, the restrictions on Major Decisions set forth in Section 5.2  
below), and in an efficient, thorough, businesslike manner, devoting such time,  
efforts and managerial resources to the business of the Company as is necessary  
for the efficient operation of the day-to-day business and affairs of the  
Company consistent with the Standard of Care. The Day-to-Day Manager shall not  
retire, resign, dissolve, withdraw or cause or suffer any event which terminates  
the continued status of the Day-to-Day Manager as a Member or as the Day-to-Day  
Manager hereunder without the prior written consent of M/I or as otherwise  
expressly permitted by Section 5.5 below. The Day-to-Day Manager shall  
faithfully discharge the duties and obligations set forth in this Agreement  
consistent with the Standard of Care.  
  
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 (b) Without limiting the generality of the foregoing, the Day-to-Day  
Manager shall have the following duties with respect to the development and  
improvement of the Project, all to be carried out in accordance with this  
Agreement and the Approved Business Plan:  
  
 (i) Obtain and maintain in compliance with all Laws, all  
governmental and agency approvals, permits and other entitlements necessary to  
proceed with the development and improvement of the Project;  
  
 (ii) Coordinate, control and supervise the preparation of such maps,  
plats, plans and specifications as are necessary for the design, development and  
construction of the Project;  
  
 (iii) Negotiate and award contracts with appropriate firms, persons,  
or entities to obtain all materials and services required in order to complete  
the Project in accordance with the Approved Business Plan;  
  
 (iv) Retain or employ and coordinate the services of all employees,  
supervisors, architects, engineers, accountants, attorneys, real estate brokers,  
advertising personnel and other persons necessary or appropriate for the  
development of the Project;  
  
 (v) Supervise the performance of all work in connection with the  
planning, development, construction, and sale of the Project;  
  
 (vi) Cause the Company to improve the Project in accordance with the  
Pulte Contract, the Development Agreement, the Approved Project Budget and Plan  
and substantially in accordance with the approved plans and specifications;  
  
 (vii) Enforce all of the Company's rights and cause the Company to  
perform all of the Company's obligations arising in connection with any contract  
or agreement entered into in connection with the Project;  
  
 (viii) Deliver to the Members copies of any notices or other written  
materials received by the Day-to-Day Manager in connection with any material  
disputes or claims relating to the Project (said disputes and claims shall be  
deemed "material" if they reasonably could be anticipated to exceed the sum of  
$50,000); and  
  
 (ix) Otherwise diligently perform those duties and services in order  
to plan, develop and improve the Project in accordance with the Approved  
Business Plan.  
  
 (c) The parties acknowledge that the Approved Business Plan will  
require updating during the term of the Project. The Day-to-Day Manager shall  
use good faith and diligent efforts to regularly consult with and update the  
non-managing Member and shall seek the input of the non-managing Member in  
connection with any material updating of the Approved Business Plan. The  
Day-to-Day Manager shall use its commercially reasonable efforts to cause the  
Project to be developed substantially in accordance with the Approved Business  
Plan as it is  
  
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updated and approved from time to time, including, without limitation, the line  
items contained therein. Subject to the approval rights set forth in Section  
5.2, the Day-to-Day Manager shall update the Approved Business Plan as set forth  
below. Without limiting the generality of Sections 5.1(a) and 5.1(b), the  
Day-to-Day Manager shall have the following additional rights and duties with  
respect to the overall operation of the Company and ownership of the Project,  
all to be carried out in accordance with this Agreement and the Approved  
Business Plan:  
  
 (i) Update the Approved Project Budget and Plan on a not less often  
than a semi-annual basis. In connection therewith, the Day-to-Day Manager shall  
deliver on or before May 1 and November 1 of each year a draft of an updated  
Approved Project Budget and Plan for approval by M/I, which approval shall not  
be unreasonably withheld, delayed or denied. Unless and until approved by M/I,  
the existing Approved Project Budget and Plan shall remain in effect subject to  
modifications required by any increases in "Non-Discretionary Expenditures"  
(defined below) in order to avoid a material adverse change to the financial  
condition or assets of the Company. As used herein, "Non-Discretionary  
Expenditures" shall mean expenditures which the Company is required to pay by  
law or pursuant to existing contracts between the Company and any third party in  
accordance with the Approved Business Plan and shall include unforeseen material  
cost increases; change orders to the contractor contract required by the project  
engineer, the soils engineer, the county, or because of unforeseen site  
conditions confirmed by the appropriate engineer; repair costs necessary because  
of engineer errors and omissions, repair costs beyond contractual obligation of  
contractor; losses and replacements; costs of addressing emergencies; and costs  
associated with weather or other matters of force majeure. At such time as the  
draft updated Approved Project Budget and Plan has been approved by M/I, it  
shall become the Approved Project Budget and Plan in effect until the same has  
been updated and such update has been approved by M/I in accordance herewith. If  
M/I has not approved a draft updated Approved Project Budget and Plan within  
thirty (30) days following receipt thereof, it shall be deemed disapproved by  
M/I; and  
  
 (ii) Update the Approved Project Contribution Plan (subject to the  
limitations contained herein) on a not less than a quarterly basis. In  
connection therewith, the Day-to-Day Manager shall deliver on or before February  
1, May 1, August 1 and November 1 of each year a draft of the updated Project  
Contribution Plan for approval by M/I, which approval shall not be unreasonably  
withheld, delayed or denied. Unless and until approved by M/I and the Day-to-Day  
Manager, the existing Approved Project Contribution Plan shall remain in effect;  
provided, however, that if such existing Approved Project Contribution Plan is  
insufficient to pay the costs and expenses of the Company in accordance with the  
Approved Project Budget and Plan, then the Members shall fund such costs and  
expenses through additional Capital Contributions pursuant to Section 3.2 above.  
At such time as the draft updated Approved Project Contribution Plan has been  
approved by M/I and the Day-to-Day Manager, it shall become the Approved Project  
Contribution Plan in effect until the same has been updated and such update has  
been approved by M/I and the Day-to-Day Manager in accordance herewith. If M/I  
or the Day-to-Day Manager has not approved a draft updated Approved Project  
Contribution Plan within thirty (30) days following receipt thereof, it shall be  
deemed disapproved by M/I or the Day-to-Day Manager, as applicable.  
  
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 (d) Notify the Members (i) in advance of public hearings and other  
proceedings relating to entitlements and permits for the Project and (ii) of any  
matter giving rise to a Major Decision pursuant to Section 5.2 below.  
  
 5.2 MAJOR DECISIONS. Except for actions taken by the Day-to-Day Manager  
with respect to an Emergency Situation in accordance with Section 5.9 below, the  
Day-to-Day Manager shall not take any of the following actions on behalf of the  
Company (in each case the taking of which shall be hereinafter referred to as a  
"Major Decision") without the prior written consent of each Member. Major  
Decisions shall bind the Company and all Members upon such written consent.  
  
 (a) Update (or otherwise amend or modify) any component of the Approved  
Business Plan in any manner;  
  
 (b) Sell, convey, exchange, lease, hypothecate, pledge, encumber or  
otherwise transfer any portion of or any interest in the Project or the Company,  
other than contemplated in the Approved Project Business Plan and this  
Agreement;  
  
 (c) Sell, convey, exchange or otherwise transfer any portion of the  
Property in either (i) a bulk sale, or (ii) any other transaction inconsistent  
with this Agreement;  
  
 (d) Expend funds or enter into an obligation on behalf of the Company  
if the amount of such expenditure or obligation would either (i) exceed 112% of  
any line item of the Development Costs component of the Approved Project Budget  
and Plan; (ii) exceed 110% of any line item of the Operating Costs component of  
the Approved Project Budget and Plan, (iii) increase the cost per Finished Lot  
by more than $500 in the aggregate or (iv) result in an increase in the Capital  
Contributions previously approved by or required from any Member beyond the  
amounts required or permitted by Section 3 of this Agreement;  
  
 (e) Incur any indebtedness on behalf of the Company, make or deliver on  
behalf of the Company any indemnity bond or surety bond, lend funds belonging to  
the Company to any Member or its Affiliate or to any third party, or extend  
credit on behalf of the Company to any person, or obligate the Company or  
another Member as a surety, guarantor, or accommodation party to any obligation,  
or grant any lien or encumbrance on the Property, including, without limitation,  
any modification of any of the foregoing, unless in accordance with the Approved  
Business Plan;  
  
 (f) Submit proposals to, or enter into agreements with, government  
officials relating to mapping, development, zoning, subdivision, environmental  
or other land use or entitlement matters, unless in accordance with the Approved  
Business Plan (provided, however, the foregoing only applies to governmental  
approvals or agreements that are discretionary and not ministerial in nature,  
such ministerial acts by themselves not being deemed to be a Major Decision so  
long as such ministerial action is consistent with the Approved Business Plan  
and current entitlements for the Property). Without limiting the above, the  
Day-to-Day Manager shall  
  
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not cause any entitlements existing as of the Commencement Date to be modified  
without the consent of M/I;  
  
 (g) The delegation by the Day-to-Day Manager of any of its duties set  
forth herein (other than to its manager, directors, officers, employees and any  
contractors, agents or consultants engaged by the Company in accordance with the  
Approved Project Budget and Plan, including the site development contractor  
approved by the Members); provided, however, that the Day-to-Day Manager shall  
only delegate its duties to such individuals and entities with the appropriate  
level of experience and seniority to perform such duties in accordance with this  
Agreement and, provided further, the selection of a site development contractor,  
and its contract with the Company, shall be a Major Decision;  
  
 (h) Except as otherwise expressly authorized by this Agreement, enter  
into any transaction on behalf of the Company with a Member or an Affiliate or  
related party of any Member;  
  
 (i) Take any other action or make any other decision that this  
Agreement provides must be approved or consented to by each Member;  
  
 (j) Possess, assign, or use funds or other property of the Company for  
other than a Company purpose;  
  
 (k) Make, execute or deliver on behalf of the Company an assignment for  
the benefit of creditors; cause the Company, a Member's Membership Interest or  
the Project or any part thereof or interest therein to be subject to the  
authority of any trustee, custodian or receiver or to be subject to any  
proceeding for bankruptcy, insolvency, reorganization, arrangement, readjustment  
of debt, relief of debtors, dissolution or liquidation or similar proceedings;  
  
 (l) Partition all or any portion of the assets of the Company, or file  
any complaint or institute any proceeding at law or in equity seeking such  
partition;  
  
 (m) Confess a judgment against the Company; settle or adjust any claims  
against the Company; or commence, negotiate or settle any legal actions or  
proceedings brought by the Company against unaffiliated third parties in excess  
of $25,000;  
  
 (n) Except as provided in this Agreement, dissolve, terminate or  
liquidate the Company prior to the expiration of its term;  
  
 (o) Effectuate the recapitalization, equity splitting or any similar  
transaction of or with respect to the Company, or the issuance of any equity  
interest, debentures or other securities of or in the Company or the issuance of  
any options, warrants or rights to purchase or acquire or effectuate any of the  
foregoing; or  
  
 (p) Do any act that would make it impossible to carry on the business  
of the Company.  
  
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 5.3 EXECUTION OF COMPANY DOCUMENTS. The Day-to-Day Manager, acting alone,  
shall have the authority to execute and deliver, on behalf of the Company,  
agreements, instruments or other documents to which the Company will be a party  
or be bound, so long as such agreements, instruments or other documents are  
consistent with this Agreement and the Approved Business Plan.  
  
 5.4 INSURANCE.  
  
 (a) COMPANY POLICIES. In accordance with the Approved Business Plan,  
the Day-to-Day Manager shall purchase and maintain, or shall cause to be  
purchased and maintained, or shall retain existing coverage and maintain, for  
and at the expense of the Company, policies of insurance standard for businesses  
such as the Company (i) for the Company's operations, (ii) for the protection of  
the Company's assets, and (iii) as may be reasonably required to comply with  
third-party requirements, and shall provide the Members with the certificates or  
other evidence of insurance coverage as provided therein.  
  
 (b) CONTRACTORS' INSURANCE OBLIGATIONS. The Day-to-Day Manager shall  
require the Project's general contractors and all subcontractors to at all times  
obtain and comply with the insurance requirements set forth on EXHIBIT "C"  
attached and incorporated herein by reference.  
  
 (c) FUTURE COOPERATION. The Members recognize that the commercial  
availability of insurance to cover the Company's and its contractors' and  
agents' operations is subject to changing market conditions. In connection  
therewith, the Members agree to cooperate and work together in good faith to  
find alternative risk management strategies in the event that any of the  
insurance required by this Agreement becomes commercially unavailable or is  
financially prohibitive in cost.  
  
 5.5 ELECTION, RESIGNATION, REMOVAL OF DAY-TO-DAY MANAGER.  
  
 (a) NUMBER, TERM, AND QUALIFICATIONS. The Company shall have one Day-  
to-Day Manager. Unless it is removed or resigns with the consent of the  
non-managing Member, the Day-to-Day Manager shall hold office until a successor  
shall have been elected and qualified. Unless the Day-to-Day Manager is removed  
pursuant to Section 5.5(c), a new Day-to-Day Manager may not be appointed  
without the unanimous affirmative vote of all Members. The Day-to-Day Manager  
shall be a Member, but need not be an individual, a resident of the State of  
Florida or a citizen of the United States.  
  
 (b) RESIGNATION. The Day-to-Day Manager may not resign without the  
prior written approval of all the Members. The approved resignation of the  
Day-to-Day Manager shall not affect the Day-to-Day Manager's rights as a Member,  
and shall not constitute a withdrawal of the Day-to-Day Manager as a Member.  
  
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 (c) REMOVAL. Ashton shall cease to be the Day-to-Day Manager if Ashton  
(or its authorized successor) ceases to be a Member of the Company or ceases to  
beneficially own its Membership Interest, and, in such event, M/I shall have the  
sole right to remove Ashton and appoint a new Day-to-Day Manager. Otherwise, the  
Day-to-Day Manager may be removed only for "cause." For purposes of this Section  
5.5(c), "cause" shall mean (i) the fraud, gross negligence, willful misconduct,  
embezzlement or bankruptcy of the Day-to-Day Manager or (ii) a breach of the  
Day-to-Day Manager's obligations as (A) a Member or (B) Day-to-Day Manager.  
Unless waived in writing by the non-managing Member, the Day-to-Day Manager  
shall be removed immediately upon the occurrence of such for "cause" event;  
provided, however, with respect to the for "cause" events under clause (ii)  
above such removal shall only be effective where the Day-to-Day Manager has  
failed to cure such breach within thirty (30) days following its receipt of  
notice from the non-managing Member of such for "cause" event, except for  
monetary breaches which must be cured within fifteen (15) days from receipt of  
such notice.  
  
 Except as set forth above in this Section 5.5(c), the Day-to-Day  
Manager may only be removed upon the decision of all Members, in which event the  
Members shall, as a Major Decision, mutually agree upon a new Day-to-Day Manager  
within thirty (30) days of the removal of the previous Day-to-Day Manager and,  
if unable to do so, either party, as its sole remaining remedy, may exercise the  
buy-sell provisions of Section 12 hereof. Upon the removal of the Day-to-Day  
Manager, the Members shall account to each other with respect to all uncompleted  
business, and shall otherwise cooperate in good faith to effect an orderly  
transition of the management of the affairs of the Company. The party or parties  
appointing the new Day-to-Day Manager may enter into a contract on behalf of the  
Company with such new Day-to-Day Manager on such terms and conditions  
(including, without limitation, compensation) as are determined in the  
reasonable business judgment of the appointing party or parties. Upon its  
removal, any former Day-to-Day Manager shall deliver to the Company all books,  
records and other instruments in its possession or under its control relating to  
the Project. The removal of Ashton (or its authorized successor) as the  
Day-to-Day Manager shall not affect Ashton's (or such successor's) rights as a  
Member, and shall not constitute a withdrawal of Ashton (or such successor) as a  
Member; however, (a) such removed Day-to-Day Manager shall not receive any  
further payments of the fee set forth in Section 6.2 below and (b) upon any such  
removal, (i) M/I may appoint a new Day-to-Day Manager, and (ii) notwithstanding  
anything herein to the contrary, neither Ashton nor its authorized successor  
shall thereafter have any right to vote on Major Decisions or otherwise manage  
or participate in the business, affairs or management of the Company if Ashton  
is removed solely as a result of Ashton's fraud, willful misconduct,  
embezzlement or bankruptcy.  
  
 5.6 MEMBERS HAVE NO DAY-TO-DAY MANAGERIAL AUTHORITY. The Members shall  
have no power to participate in the management of the Company except as  
expressly authorized by this Agreement.  
  
 5.7 COMPETING ACTIVITIES. The Members and their respective Affiliates may  
engage or invest in, independently or with others, any business activity of any  
type or description, including, without limitation, those that might be the same  
as or similar to the Company's business and that might be in direct or indirect  
competition with the Company. Neither the  
  
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Company nor any Member shall have any right in or to such other ventures or  
activities or to the income or proceeds derived therefrom, and the fiduciary  
duties of the Members to each other and the Company shall be limited solely to  
those arising from the purposes of the Company described in Section 2.4 above.  
The Members shall not be obligated to present any investment opportunity or  
prospective economic advantage to the Company, even if the opportunity is of the  
character that, if presented to the Company, could be taken by the Company. The  
Members shall have the right to hold any investment opportunity or prospective  
economic advantage for their own account or to recommend such opportunity to  
persons other than the Company.  
  
 5.8 THIRD PARTY RELIANCE. Any person not a party to this Agreement who  
shall deal with the Company shall be entitled to rely conclusively upon the  
power and authority of the Day-to-Day Manager as set forth herein.  
  
 5.9 EMERGENCY SITUATIONS. Notwithstanding anything herein to the contrary,  
if the Day-to-Day Manager, in its reasonable business judgment, concludes that  
emergency repairs, replacements or other actions (including by way of example  
and not limitation, the signing of documents) are immediately necessary for the  
preservation or safety of persons or any portion of the Project (individually or  
collectively, an "Emergency Situation") and the Day-to-Day Manager, after using  
reasonably diligent efforts, is unable to consult with the non-managing Member  
prior to taking any action in such Emergency Situation, then the Day-to-Day  
Manager may take said action without the prior approval of the non-managing  
Member. If the Day-to-Day Manager takes such action by reason of an Emergency  
Situation, the Day-to-Day Manager shall notify the non-managing Member in  
writing as quickly as possible after the taking of such action, the reasons  
therefore and the cost thereof. The Members agree to cooperate to establish  
appropriate emergency notification procedures under this Agreement.  
  
 6. COMPENSATION AND REIMBURSEMENTS TO MEMBERS.  
  
 6.1 NO RIGHT TO COMPENSATION FOR SERVICES. Except as provided in this  
Agreement, no Member shall receive compensation for services rendered to the  
Company or for overhead expenses of any kind whatsoever. The fees to the  
Day-to-Day Manager set forth in this Section 6 are fees and not distributions  
for the purposes of this Agreement.  
  
 6.2 MANAGER FEE. In consideration for the services to be performed  
hereunder by the Day-to-Day Manager in connection with its obligations set out  
in this Agreement, M/I shall pay the Day-to-Day Manager a fee (the "Manager  
Fee") equal to Three Hundred Dollars ($300.00) per Finished Lot distributed to  
M/I pursuant to this Agreement as and when such a Finished Lot is delivered. The  
Company anticipates having approximately 364 Finished Lots.  
  
 6.3 EXPENSES. The Day-to-Day Manager shall be entitled to receive  
reimbursement from the Company for only those reasonable third-party costs and  
expenses actually incurred by the Day-to-Day Manager on behalf of the Company in  
accordance with the Approved Project Budget and Plan; provided, however, the  
Day-to-Day Manager shall not be entitled to any reimbursement or credit of any  
kind whatsoever for the costs and expenses incurred by the Day-  
  
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to-Day Manager or any Affiliate of the Day-to-Day Manager in the performance of  
its obligations hereunder which are covered by the Manager Fee.  
  
 6.4 COMMISSIONS, BROKER'S FEES, ETC. M/I and Ashton hereby represent  
and warrant to the other that such Member has employed no broker or finder in  
connection with the formation of the Company or acquisition of the Property. M/I  
and Ashton each agree to indemnify and hold the other harmless from and against  
any and all claims, liabilities, damages, losses and expenses (including,  
without limitation, attorneys' fees) arising from or in connection with such  
party's breach of the representation set forth in this Section 6.4.  
  
 7. ALLOCATIONS OF NET PROFITS AND NET LOSSES AND DISTRIBUTIONS.  
  
 7.1 TAX AND ACCOUNTING. The Members intend that the Company shall be  
treated as a "partnership" for Federal, state and local income and franchise tax  
purposes. In furtherance of the foregoing intention, the Company and (at the  
request of and at the direction of the Company) the Members shall take such  
actions as may be required in order to give affect to such intent. Under no  
circumstance shall the Company or any Member take any action that is  
inconsistent with the foregoing intention.  
  
 7.2 ALLOCATIONS OF LOSSES. Except to the extent provided in Section  
7.4, if there shall be taxable losses of the Company for a fiscal year of the  
Company, such taxable losses shall be allocated between the Members in the  
following order:  
  
 (i) first, to the Members (in proportion to the amounts of losses to  
be allocated in accordance with this Section 7.2(i)) until there have been  
allocated to each Member losses equal to the excess, if any, of (X) the  
cumulative amount of income allocated to such Member pursuant to Section  
7.3(iii) hereof through and including such fiscal year; and (Y) the cumulative  
amount of losses allocated to such Member pursuant to this Section 7.2(i)  
through and including such fiscal year;  
  
 (ii) next, to the Members to cause, to the extent possible, their  
respective Capital Account balances to be in proportion to their then respective  
Percentage Interests; and  
  
 (iii) next, to the Members, in accordance with their then respective  
Percentage Interests.  
  
 7.3 ALLOCATIONS OF INCOME. Except to the extent provided in Section  
7.4, if there shall be taxable income of the Company for a fiscal year of the  
Company, such taxable income shall be allocated between the Members in the  
following order:  
  
 (i) first, to the Members (in proportion to the amounts of income to  
be allocated in accordance with this Section 7.3(i)) until there shall have been  
allocated to each Member income equal to the excess, if any, of (X) the  
cumulative amount of losses allocated to such Member pursuant to Section  
7.2(iii) hereof through and including such fiscal year; and (Y)  
  
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the cumulative amount of income allocated to such Member pursuant to this  
Section 7.3(i) through and including such fiscal year;  
  
 (ii) next, to the Members to cause, to the extent possible, their  
respective Capital Account balances to be in proportion to their then respective  
Percentage Interests; and  
  
 (iii) next, to the Members, in accordance with their then respective  
Percentage Interests.  
  
 7.4 SPECIAL ALLOCATIONS.  
  
 (a) QUALIFIED INCOME OFFSET. If any Member unexpectedly receives an  
adjustment, allocation or distribution described in Regulations Section  
1.704-1(b)(2)(ii)(d)(4), (5) or (6) in any fiscal year or other period which  
would cause such Member to have a deficit Capital Account balance as of the end  
of such fiscal year or other period, items of Company income and gain  
(consisting of a pro rata portion of each item of Company income, including  
gross income and gain) shall be specially allocated to such Member in an amount  
and manner sufficient to eliminate, to the extent required by the Regulations,  
the deficit Capital Account balance of such Member as quickly as possible. This  
Section 7.4(a) is intended to comply with the qualified income offset provision  
in Regulations Section 1.704-1(b)(2)(ii)(d), and shall be interpreted  
consistently therewith.  
  
 (b) COMPANY MINIMUM GAIN CHARGEBACK. If there is a net decrease in  
"Partnership Minimum Gain" (as determined in accordance with the principles of  
Regulation Section 1.704-2(d)) during a Company fiscal year or other period,  
each Member shall be allocated items of Company income and gain for such fiscal  
year or other period (and, if necessary, for subsequent fiscal years or periods)  
in proportion to, and to the extent of, such Member's share of such net  
decrease, except to the extent such allocation would not be required by  
Regulations Section 1.704-2(f). The amounts referred to in this Section 7.4(b)  
and the items to be so allocated shall be determined in accordance with  
Regulations Section 1.704-2. This Section 7.4(b) is intended to constitute a  
"minimum gain chargeback" provision as described in Regulations Section  
1.704-2(f), and shall be interpreted consistently therewith and with Regulation  
Section 1.704(e)(3).  
  
 (c) MEMBER NONRECOURSE DEBT MINIMUM GAIN CHARGEBACK. If there is a  
net decrease in "Partner Nonrecourse Debt Minimum Gain" (as defined in  
Regulation Section 1.704-2(i)(2)) during a Company fiscal year or other period,  
each Member shall be allocated items of Company income and gain for such fiscal  
year or other period (and, if necessary, for subsequent fiscal years or periods)  
equal to such Member's share of such net decrease, except to the extent such  
allocation would not be required by Regulations Section 1.704-2(i)(4). The  
amounts referred to in this Section 7.4(c) and the items to be so allocated  
shall be determined in accordance with Regulations Section 1.704-2. This Section  
7.4(c) is intended to comply with the minimum gain chargeback requirement  
contained in Regulations Section 1.704-2(i)(4), and shall be interpreted  
consistently therewith.  
  
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 (d) MEMBER NONRECOURSE DEDUCTIONS. "Partner Nonrecourse Deductions"  
(as defined in Regulation Section 1.704-2(b)(1)) for any fiscal year or other  
period shall be specially allocated to the Members who bear the economic risk of  
loss for the Partner Nonrecourse Debt (as defined in Regulations Section  
1.704-2(b)(4)) to which such Member Nonrecourse Deductions are attributable, as  
provided in Regulations Section 1.704-2(i)(1).  
  
 (e) NONRECOURSE DEDUCTIONS. Nonrecourse Deductions for any fiscal  
year shall be allocated to the Members in accordance with their respective  
Percentage Interests.  
  
 (f) EXCESS NONRECOURSE LIABILITIES. Nonrecourse Debts of the Company  
which constitute "Excess Nonrecourse Liabilities" (as defined in Regulations  
Section 1.704-2(b)(3)) shall be allocated among the Members in accordance with  
their respective Percentage Interests.  
  
 (g) ORDERING RULES. Anything contained in this Agreement to the  
contrary notwithstanding, allocations for any fiscal year or other period of  
Nonrecourse Deductions or Member Nonrecourse Deductions, or of items required to  
be allocated pursuant to the minimum gain chargeback requirements contained in  
Section 7.4(b) and Section 7.4(c) hereof, shall be made before any other  
allocations hereunder.  
  
 (h) SECTION 704(C) ALLOCATIONS. Notwithstanding Section 7.2 and 7.3,  
the gain or loss for federal income tax purposes from the sale or other  
disposition of Finished Lots and parcels at the Project shall be allocated to  
the Members in accordance with the requirements of Section 704(c) of the Code  
and the Treasury Regulations promulgated thereunder, using the traditional  
method of allocations contained in Section 1.704-3(b) of the Treasury  
Regulations and based upon the fair market values set forth in Section 3.1. Any  
gain or loss in excess of the amount allocated pursuant to the preceding  
sentence shall be allocated between the Members as provided in Section 7.2 or  
Section 7.3, as the case may be.  
  
 7.5 NO NEGATIVE CAPITAL ACCOUNT MAKEUP. No Member shall have any  
obligation to contribute funds to bring any negative balance in its Capital  
Account to zero.  
  
 7.6 ORDER OF DISTRIBUTION OF AVAILABLE CASH. Available Cash may be  
distributed to the Members pro rata in accordance with their respective  
Percentage Interests at such times, and in such amounts as reasonably determined  
by the Day to Day Manager; provided, however, that Available Cash shall not be  
distributed without the consent of the non-Managing Members), which consent  
shall not be unreasonably withheld or delayed.  
  
 7.7 FORM OF DISTRIBUTION. A Member has no right to demand and receive  
any distribution from the Company in any form other than the Finished Lots  
except as otherwise provided herein.  
  
 7.8 RETURN OF DISTRIBUTIONS. Except for distributions made in violation  
of the Act or this Agreement, no Member shall be obligated to return any  
distribution to the Company or pay the amount of any distribution for the  
account of the Company or to any creditor of the Company.  
  
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The amount of any distribution returned to the Company by a Member or paid by a  
Member for the account of the Company or to a creditor of the Company pursuant  
to the previous sentence shall be added to the account or accounts from which it  
was subtracted when it was distributed to the Member.  
  
 8. DISSOLUTION AND WINDING UP.  
  
 8.1 DISSOLUTION. The Company shall be dissolved, its assets shall be  
disposed of, and its affairs wound up on the first to occur of the following:  
  
 (a) upon the sale or distribution of all or substantially all of the  
assets of the Company including the distribution of all Finished Lots to the  
Members and conveyance of any common areas to the homeowners association, and  
the collection by the Company of any and all cash and other assets derived  
therefrom; or  
  
 (b) an election to dissolve the Company made in writing by all the  
Members.  
  
 8.2 WINDING UP. Upon the occurrence of any event specified in Section  
8.1, the Members shall determine the manner in which the affairs of the Company  
shall be wound up (which may include the sale of any remaining portion of the  
Property). The Company shall engage in no further business thereafter other than  
that necessary to wind up the business and distribute the assets. The Company  
shall continue to allocate profits and losses during the winding up period in  
the same manner as such amounts were divided before dissolution.  
  
 8.3 ORDER OF PAYMENT OF LIABILITIES UPON DISSOLUTION. After determining  
that all debts and liabilities of the Company in the process of winding-up,  
debts and liabilities to Members and other parties who are creditors of the  
Company, and the repayment of construction or other loans to the Company have  
been paid or adequately provided for, the remaining assets shall be distributed  
to the Members in accordance with Section 7.6 above.  
  
 8.4 LIMITATIONS ON PAYMENTS MADE IN DISSOLUTION. Each Member shall only  
be entitled to look solely to the assets of the Company for the return of its  
positive Capital Contribution, and shall have no recourse for the return of its  
Capital Contribution and/or share of net profits (upon dissolution or otherwise)  
against the Day-to-Day Manager or any Member.  
  
 9. TRANSFER OF INTEREST.  
  
 9.1 TRANSFER AND ASSIGNMENT OF INTERESTS. A Member shall not transfer,  
assign, convey, sell, encumber or in any way alienate (collectively, "Transfer")  
all or any part of its Membership Interest without the prior written consent of  
the other Member(s), except as otherwise provided herein. Transfers in violation  
of this Section 9.1 shall be null and void ab initio. After the consummation of  
any Transfer of any part of a Membership Interest, the Membership Interest so  
transferred shall continue to be subject to the terms and provisions of this  
Agreement and any further Transfers shall be required to comply with all the  
terms and provisions of this Agreement.  
  
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 9.2 FURTHER RESTRICTIONS ON TRANSFER OF INTERESTS. In addition to other  
restrictions found in this Agreement, no Member shall Transfer all or any part  
of such Member's Membership Interest without compliance with all applicable  
federal and state securities law.  
  
 9.3 SUBSTITUTION OF MEMBERS. An assignee of a Membership Interest shall  
have the right to become a substitute Member only if (i) the requirements of  
this Section 9 are satisfied, (ii) the assignee executes an instrument  
satisfactory to all of the Members accepting and adopting the terms and  
provisions of this Agreement, (iii) the Assignee pays any reasonable expenses  
incurred by the Company in connection with its admission as a new Member, and  
(iv) the other Member consents in writing to the substitution in its sole and  
absolute discretion.  
  
 9.4 PERMITTED TRANSFERS. Notwithstanding the restrictions set forth in  
Sections 9.1 or 9.3, a Member shall have the right without the consent of the  
other Member to Transfer all or a portion of its Membership Interest to an  
Affiliate; provided, however, that for so long as Ashton is the Day-to-Day  
Manager, any such Transfer by Ashton must be to an Affiliate approved by M/I in  
writing, which approval shall not be unreasonably withheld, delayed or denied.  
The admission of a Member's Affiliate as a substitute Member in place of such  
Member shall not result in the release of the Member who assigned the Membership  
Interest from any liability or obligations that such Member may have to the  
Company.  
  
 9.5 RIGHT OF FIRST REFUSAL. Notwithstanding the restrictions set forth  
in Sections 9.1 or 9.3, M/I grants to Ashton and Ashton grants to M/I the right  
of first refusal to purchase the other party's Membership Interest in the  
Company on the following terms and conditions:  
  
 (a) Each party's right of first refusal shall be exclusive and  
neither party shall grant similar or the same right to any other;  
  
 (b) If M/I or Ashton, directly or indirectly, enter into a bona  
fide, arms length and binding agreement to sell its Membership Interest in the  
Company (the "Notifying Party's Agreement"), such party shall notify ("Notifying  
Party") the other party (the "Receiving Party") that the Notifying Party entered  
into such Notifying Party's Agreement, which notice to be valid must include a  
complete and legible copy of the Notifying Party's Agreement, including all  
exhibits and any other terms and conditions applicable to the Notifying Party's  
Agreement;  
  
 (c) The Receiving Party shall have thirty (30) days following the  
Receiving Party's receipt of the Notifying Party's notice (which notice shall  
not be deemed sufficient unless it complies with the terms and conditions of  
this Agreement) to elect to accept the terms and conditions of the Notifying  
Party's Agreement, except as set forth below, by delivering written notice  
thereof to the Notifying Party on or before the end of such thirty (30) days;  
notwithstanding the foregoing, however, if the Receiving Party elects to accept  
the terms and conditions of the Notifying Party's Agreement, the Receiving Party  
shall have the further right to purchase the Membership Interest of the  
Notifying Party for a purchase equal to the lesser of (i) the purchase price for  
the Notifying Member's Membership Interest as set forth in the Notifying Party's  
Agreement and (ii) the amount allocated to such Notifying Party's Capital  
Account.  
  
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 (d) If the Receiving Party elects in its sole discretion not to (or  
fails to) accept the terms of the Notifying Party's Agreement, the Notifying  
Party shall be free to sell the Notifying Party's Membership Interest in the  
Company under the terms and conditions of the Notifying Party's Agreement but  
only so long as (i) the transaction contemplated by the Notifying Party's  
Agreement closes within ninety (90) days from the date of the Notifying Party's  
receipt of the Receiving Party's election not to accept the Notifying Party's  
Agreement (regardless of any contrary terms of the Notifying Party's Agreement)  
and (ii) such closing occurs on substantially the same terms and conditions  
under the Notifying Party's Agreement (without limiting the generality of the  
foregoing, a reduction of the purchase price under the Notifying Party's  
Agreement of greater then two percent (2%) shall be deemed a substantial change  
in the Notifying Party's Agreement);  
  
 (e) If the Receiving Party elects not to accept the Notifying  
Party's Agreement and the transaction described in the Notifying Party's  
Agreement fails to timely close or to close on the conditions herein required  
for any reason, then the Receiving Party's right of first refusal shall be  
deemed reinstated and the Notifying Party shall not be entitled to close under  
the Notifying Party's Agreement or any other agreement without re-offering or  
offering the Notifying Party's Agreement or such other to the Receiving Party;  
  
 (f) A Notifying Party shall not be entitled to sell less than one  
hundred percent (100%) of its Membership Interest in the Company;  
  
 (g) Delivery of any notice required hereunder by the Notifying Party  
or Receiving Party shall be made in writing under the terms required for  
delivery of notice hereunder;  
  
 (h) A direct or indirect transfer of an interest in the Property  
that does not strictly comply with the terms and conditions of this Agreement  
shall not terminate the non-transferring party's right of first refusal; and  
  
 (i) If the Receiving Party accepts the terms of the Notifying  
Party's Agreement but fails to close as required, then the Notifying Party's  
sole and exclusive remedy shall be to either enforce an action for specific  
enforcement and receive its costs of such action or to terminate the Receiving  
Party's right of first refusal as agreed upon liquidated damages.  
  
 10. ACCOUNTING, RECORDS, REPORTING BY MEMBERS.  
  
 10.1 BOOKS AND RECORDS. The books and records of the Company shall be  
kept, and the financial position and the results of its operations recorded, on  
an accrual basis by the Day-to-Day Manager in accordance with generally accepted  
accounting principles. The books and records of the Company shall reflect all  
the Company transactions and shall be appropriate and adequate for the Company's  
business. The Company shall maintain at its principal office in Florida all of  
the following:  
  
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 (a) A current list of the full name and last known business or  
residence address of each Member set forth in alphabetical order, together with  
the Capital Contributions, Capital Account and Percentage Interest of each  
Member;  
  
 (b) A copy of the Articles and any and all amendments thereto  
together with executed copies of any powers of attorney pursuant to which the  
Articles or any amendments thereto have been executed;  
  
 (c) A copy of this Agreement and any and all amendments thereto  
together with executed copies of any powers of attorney pursuant to which this  
Agreement or any amendments thereto have been executed;  
  
 (d) Copies of the Company's federal, state, and local income tax or  
information returns and reports, if any, for the six (6) most recent taxable  
years;  
  
 (e) Copies of the financial statements of the Company, if any, for  
the six (6) most recent fiscal years; and  
  
 (f) The Company's books and records as they relate to the internal  
affairs of the Company for at least the current and past four (4) fiscal years.  
  
 10.2 INSPECTION. Each Member has the right, upon reasonable written  
request to the Day-to-Day Manager (made at least five (5) business days prior to  
such Member's intent to exercise their rights under this Section 10.2) for  
purposes reasonably related to the interest of the Person as Member, to inspect  
and copy during normal business hours any of the Company records described in  
Sections 10.1.  
  
 10.3 FINANCIAL STATEMENTS AND OTHER REPORTS.  
  
 (a) ANNUAL FINANCIAL STATEMENTS. At the expense of the Company, the  
Day-to-Day Manager shall provide each Member with financial statements of the  
Company prepared by a certified public accounting firm selected by the Members,  
within ninety (90) days after the completion of the Company's fiscal year. In  
the event of a dispute between the Members regarding the Company's financial  
statements, either Member has the right to require that the financial statements  
of the Company be audited by a certified public accounting firm selected by the  
Member desiring such audited financial statements (an "Audit"). The cost of any  
such Audit shall be paid by the Company; provided, however, if any such Audit is  
not, in the opinion of such accounting firm, materially different than the  
unaudited financial statements of the Company, then the Audit shall be paid by  
the Member which requested such Audit and such Member shall also pay to the  
Day-to-Day Manager a liquidated amount equal to the cost of such audit to offset  
the time and expense of the Day-to-Day Manager in connection with such audit.  
  
 (b) QUARTERLY FINANCIAL REPORTS. The Day-to-Day Manager shall, by  
the 15th day of each calendar quarter during the term of the Company, prepare,  
or cause to be prepared, and deliver to the Members a balance sheet showing the  
assets and liabilities of the  
  
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Company as of the last day of the previous calendar quarter, an income statement  
presenting the results of the operations of the Company for such quarter. On a  
quarterly basis, Day-to-Day Manager shall prepare and deliver to the members a  
job cost report for the Project which shall include all Project costs incurred  
to the then current date, a variance schedule showing any deviations from the  
cost line items provided for in the Approved Project Budget and Plan and a year  
to date summary of such operations and, if requested by any Member, a statement  
of sources and applications of funds.  
  
 (c) FILINGS. The Day-to-Day Manager, at Company expense, shall  
 cause the income tax returns for the Company to be prepared and timely filed  
 with the appropriate authorities. The Day-to-Day Manager, at Company expense,  
 shall also cause to be prepared and timely filed, with appropriate federal and  
 state regulatory and administrative bodies, amendments to, or restatements of  
 the Articles and all reports required to be filed by the Company with those  
 entities under the Act or other then current applicable laws, rales, and  
 regulations.  
  
 (d) ACCOUNTING DECISIONS. All decisions as to accounting  
 matters, except as otherwise specifically set forth herein, shall be made by  
 the Members jointly.  
  
 10.4 TAX MATTERS PARTNER. The Day-to-Day Manager shall be the "tax matters  
partner" of the Company as such term is defined in Section 6231(a)(7) of Code  
(the "Tax Matters Partner"), and it shall serve as such at the expense of the  
Company with all powers granted to a tax matters partner under the Code. The Tax  
Matters Partner shall use its commercially reasonable efforts to prepare and  
file on a timely basis, with due regard to extensions, all tax and information  
returns that the Company may be required to file, all at Company expense. No tax  
or information return shall be filed unless approved by the Members, such  
approval not to be unreasonably withheld or delayed. Each Member shall give  
prompt notice to each other Member of any and all notices it receives from the  
Internal Revenue Service concerning the Company, including any notice of audit,  
any notice of action with respect to a revenue agent's report, any notice of a  
30-day appeal letter and any notice of a deficiency in tax concerning the  
Company's federal income tax return. The Tax Matters Partner shall, at Company  
expense, furnish each Member with status reports regarding any negotiation  
between the Internal Revenue Service and the Company, and each such Member, if  
it so requests, may participate in such negotiation. The Tax Matters Partner  
shall not enter into any settlement with any taxing authority (federal, state or  
local) or extend the statute of limitations on behalf of the Company or the  
Members without the approval of all Members.  
  
 11. INVESTMENT REPRESENTATIONS.  
  
 11.1 REPRESENTATIONS AND WARRANTIES. Each Member hereby represents and  
warrants to the Company and each other Member as follows:  
  
 (a) AUTHORIZATION. The Member is duly organized, validly existing,  
and in good standing under the law of its state of organization and that it has  
full power and authority to execute and agree to this Agreement and to perform  
its obligations hereunder and that all actions  
  
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necessary for the due authorization, execution, delivery and performance by that  
Member of this Agreement have been duly taken.  
  
 (b) COMPLIANCE WITH OTHER INSTRUMENTS. The Member's authorization,  
execution, delivery, and performance of this Agreement do not conflict with any  
other agreement or arrangement to which such Member is a party or by which it is  
bound.  
  
 (c) PURCHASE ENTIRELY FOR OWN ACCOUNT. The Member is acquiring its  
Membership Interest in the Company for the Member's own account for investment  
purposes only and not with a view to or for the resale, distribution,  
subdivision or fractionalization thereof and has no contract, understanding,  
undertaking, agreement or arrangement of any kind with any person to sell,  
transfer or pledge to any person its interest or any part thereof nor does such  
Member have any plan to enter into any such agreement.  
  
 (d) INVESTMENT EXPERIENCE. By reason of its business or financial  
experience, the Member has the capacity to protect its own interest in  
connection with the transactions contemplated hereunder, is able to bear the  
risks of an investment in the Company, and at the present time could afford a  
complete loss of such investment.  
  
 (e) DISCLOSURE OF INFORMATION. The Member is aware of the Company's  
business affairs and financial condition and has acquired sufficient information  
about the Company to reach an informed and knowledgeable decision to acquire an  
interest in the Company.  
  
 (f) FEDERAL AND STATE SECURITIES LAWS. The Member acknowledges that  
the Membership Interests have not been registered under the Securities Act of  
1933 or any state securities laws, inasmuch as they are being acquired in a  
transaction not involving a public offering, and, under such laws and subject to  
the transfer restrictions set forth in Article 9 may not be resold or  
transferred by the Member without appropriate registration or the availability  
of an exemption from such requirements. In this connection, the Member  
represents that it is familiar with SEC Rule 144, as presently in effect, and  
understands the resale limitations imposed thereby and by the Securities Act of  
1933.  
  
 11.2 REPRESENTATIONS AND WARRANTIES OF ASHTON. In addition to the  
representations, warranties set forth in Section 11.1 above, and as an  
inducement to M/I to enter into this Agreement, Ashton represents and warrants  
to M/I that:  
  
 (a) The Pulte Contract has been duly and validly assigned to the Company  
by Ashton and, to Ashton's knowledge, neither the seller nor the purchaser  
therein is now or ever has been in default thereunder and all payments due to be  
made thereunder have been paid in full;  
  
 (b) To Ashton's knowledge: no dispute currently exists between the seller  
and purchaser or any other party with respect to the Pulte Contract; no  
condition has been discovered upon the land or exists with respect thereto which  
would result in a default or give either party the right to terminate the Pulte  
Contract; and, to Ashton's actual knowledge, there are no title,  
  
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survey, soil, environmental, governmental or other condition exists which would  
materially and adversely effect the development of the Property in accordance  
with, and as contemplated, herein and in the Pulte Contract;  
  
 (c) To Ashton's actual knowledge, there are no actions, suits, proceedings  
or investigations pending or threatened with respect to the Pulte Contract, the  
Property or the Project;  
  
 (d) No notices have been received by Ashton from any governmental  
authority that the Project or Property is in violation of any Laws and, to  
Ashton's knowledge, the Property can be developed as contemplated herein and in  
the Pulte Contract;  
  
 (e) To Ashton's knowledge, neither this Agreement or any related document,  
exhibit or schedule attached hereto prepared or furnished by Ashton contains an  
untrue statement in material fact or misstates a material fact relating to the  
Property, the Project or the Pulte Contract.  
  
 (f) Prior to M/I acquiring the M/I Interest: no other party other than  
Ashton owned or controlled any interest in and to the equity or Membership  
Interests of the Company; and the Company has no employees or consultants and no  
assets or liabilities other than those contemplated by the Pulte Contract and  
this Agreement.  
  
 11.3 SURVIVAL OF REPRESENTATIONS AND WARRANTIES. All representations and  
warranties herein shall survive the execution and delivery of this Agreement,  
the formation of the Company and the dissolution and final liquidation of the  
Company.  
  
 12. BUY/SELL.  
  
 12.1 PUT/CALL OFFERING NOTICE. A Member (the "Initiating Member") shall  
have the right to invoke the provisions of this Section 12 by giving written  
notice (the "Offering Notice") to the other Member (the "Responding Member") of  
its intent to rely on this Section 12 and to purchase all, but not less than  
all, of the Responding Member's Membership Interest only under the following  
circumstances: (i) By the non-defaulting Member, if at any time a Member is in  
default hereunder and more than thirty (30) days have elapsed since such  
non-defaulting Member has given written notice thereof to such defaulting Member  
and such default has not been cured, or (ii) as otherwise provided in this  
Agreement, including Sections 3.2(c), 5.5(c) and 14.10(b). In any such event,  
the provisions set forth in this Section 12 shall apply. The Initiating Member  
shall specify in its Offering Notice the all cash purchase price per percent of  
Percentage Interest ("Purchase Price") at which the Initiating Member would be  
willing to purchase all the Responding Member's Membership Interest.  
  
12.2 EXERCISE OF PUT/CALL. Within 30 days after the delivery date of the  
Offering Notice, the Responding Member shall then be obligated either to:  
  
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 (a) Sell to the Initiating Member its Membership Interest for the  
Purchase Price times its Percentage Interest; or  
  
 (b) Purchase the Membership Interest of the Initiating Member for  
the Purchase Price times the Initiating Member's Percentage Interest.  
  
 The Responding Member shall notify the Initiating Member of its election  
(the "Election Notice") within thirty (30) days after the date of its receipt of  
the Offering Notice. In the event the Responding Member fails to give such  
notice within the required time period, the Initiating Member shall purchase the  
Responding Member's Membership Interest according to the terms of this Section  
12. For purposes of this Section 12 the term "Purchasing Member" shall mean the  
Member who is obligated to purchase the other Member's Membership Interest  
(whether such Member is the Initiating Member or the Responding Member) and the  
term "Selling Member" shall mean the Member who is obligated to sell its  
Membership Interest to the Purchasing Member.  
  
 12.3 DESIGNEE; FINANCING. In the event that any Member purchases the other  
Member's Membership Interest pursuant to this Section 12, such Purchasing Member  
shall be entitled to designate any third party to be the transferee of such  
interest or obtain financing from any third party with respect to such purchase,  
provided that the foregoing shall not be a condition to or delay any transaction  
described in this Section 12.  
  
 12.4 CLOSING.  
  
 (a) The Members shall meet and exchange documents and pay any  
amounts due, and otherwise do all things necessary to conclude the transaction  
set forth herein at the closing of such purchase (the "Closing"). The Closing  
shall occur in Florida at the office of the Selling Member's legal counsel at  
1:00 p.m. on the date specified in the Responding Member's Election Notice,  
which date shall not be more than thirty (30) days after the date of delivery of  
the Election Notice (or the date such Election Notice was due if no Election  
Notice was timely given). At the Closing, the Selling Member shall deliver to  
the Purchasing Member a duly executed assignment of its Membership Interest and  
shall also, upon the request of the Purchasing Member, concurrently therewith  
(or at any time and from time to time thereafter) execute and deliver such other  
customary documents and records as the Purchasing Member reasonably requests to  
conclude the Closing and to transfer ownership, title and control of the  
Membership Interest (including, but not limited to, execution, in recordable  
form, of amended Articles). The Purchasing Member shall deliver to the Selling  
Member cash in an amount determined pursuant to Section 12.2 (less the amount of  
any outstanding debt owed by the Selling Member to the Purchasing Member (or an  
Affiliate of the Purchasing Member)) for the full amount of the consideration,  
if any, for such Membership Interest, and shall deliver any other documents  
necessary from the Purchasing Member to conclude the Closing. The Selling Member  
shall transfer its Membership Interest free of all liens or encumbrances.  
Further, at the Closing, and as an express condition to the Selling Member's  
obligation to transfer its Membership Interest pursuant to this Section 12, the  
Selling Member and/or its Affiliates shall have been released from its liability  
under any third-party loans to the Company and any guarantees made in connection  
therewith. If a Company creditor refuses to so release the Selling  
  
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Member and/or its Affiliates, the Purchasing Member shall indemnify the Selling  
Member and/or its Affiliates from liability to any Company creditor. In  
furtherance thereof, the Purchasing Member shall provide or shall cause one of  
its Affiliates to provide guarantees or such other security as reasonably  
requested by Selling Member.  
  
 (b) If the Purchasing Member fails to close as aforesaid, in  
addition to any other remedies available at law or in equity, the Selling Member  
shall have the right, exercisable by written notice to the Purchasing Member  
given within thirty (30) days of the date set for the Closing, to purchase under  
this Section 12 the Membership Interest of the Purchasing Member. If the Selling  
Member exercises such option, the Purchase Price used shall be seventy-five  
percent (75%) of the Purchase Price the Purchasing Member was obligated to pay  
at the originally scheduled Closing.  
  
 13. FINISHED LOT DISTRIBUTION. Subject to the terms and conditions of this  
Agreement, each Member shall be allocated the Finished Lots owned by the Company  
from time to time, which Finished Lots shall be allocated in accordance with the  
Members' respective Percentage Interests and as set forth on EXHIBIT "D"  
attached hereto (EXHIBIT "D" to be adjusted as necessary should the respective  
Percentage Interests of the Members change). Each Member shall be responsible  
for all its customary closing costs associated with such allocation and  
distribution. The Finished Lots shall be distributed to the Members in two  
phases, Phase I and Phase II. Should the Members agree to a disproportionate  
distribution of Phase I Finished Lots, then the distribution of the Phase II  
Finished Lots shall be adjusted accordingly such that the total number of  
Finished Lots distributed to each Member were allocated in accordance with the  
Members' respective Percentage Interests. Should such reallocation of Phase I  
Finished Lots occur following the Company's distribution of such Phase I  
Finished Lots to the Members, the Members shall divide all customary closing  
costs associated with such transfer equally. The Members' failure to agree upon  
any disproportionate distribution shall not invoke the provisions of Section  
14.10(b). The Members agree that all Finished Lots shall have an equal value.  
  
 14. MISCELLANEOUS.  
  
 14.1 NOTICES. Any notice which a party is required or may desire to give  
the other party shall be in writing and may be personally delivered, delivered  
by telecopy or given by United States certified mail, return receipt requested,  
addressed as follows (subject to the right of a party to designate a different  
address for itself by notice similarly given):  
  
TO ASHTON: Ashton Tampa Residential, LLC  
 000 X. Xxxxxxxxx Xxxxxxxxx  
 Xxxxx 0000  
 Xxxxx, Xxxxxxx 00000  
 Attn: Xx. Xxxxx X. Xxxxx  
 Facsimile No.: (000) 000-0000  
  
And: Xxxxxx Xxxxx Xxxxx  
 0000 Xxxxxxx Xxxxxx, Xxxxxxxx 200,  
  
 29  
  
  
 Suite 350  
 Roswell, Georgia 30076  
 Attn.: Xxxxxx Xxxxxx  
 Facsimile No.: (000) 000-0000  
  
And: Xxxxxxx X. Xxxxxx, Esquire  
 Xxxx Xxxxxx, Professional  
 Association  
 000 X. Xxxxxxx Xxxx, Xxxxx 0000  
 Xxxxx, Xxxxxxx 00000  
 Facsimile No.: (000) 000-0000  
  
TO M/I: M/I Homes of Tampa, LLC  
 0000 Xxxxxxxxxx Xxxx., Xxxxx 000  
 Xxxxx, Xxxxxxx 00000  
 Attention: Xxxx Xxxxxxxx  
 Area President  
 Facsimile No. (000) 000-0000  
  
And: M/I Homes of Tampa, LLC  
 c/o Xxx Xxxxx, Esq.  
 General Counsel  
 0 Xxxxxx Xxxx, Xxxxx 000  
 Xxxxxxxx, Xxxx 00000  
 Telephone: (000)000-0000  
 Facsimile: (000)000-0000  
  
And: Xxx X. Xxxxxx, Esquire  
 Xxxxxxxx Schifino Xxxxxxxx &  
 Steady, P.A.  
 Xxx Xxxxx Xxxx Xxxxxx, Xxxxx 0000  
 Xxxxx, Xxxxxxx 00000  
 Facsimile No.: (000) 000-0000  
  
Any notice so given by United States mail shall be deemed to have been given on  
the third day after the same is deposited in the United States mail as a  
certified matter, return receipt requested, addressed as above provided, with  
postage thereon fully prepaid. Any notice not given by certified mail as  
aforesaid shall be deemed to be given upon actual receipt of the same by the  
party to whom the same is to be given, provided that the refusal by such party  
to receive any such notice shall be deemed such party's receipt of the same.  
  
 14.2 ENTIRE AGREEMENT This Agreement, together with the exhibits attached  
hereto, represents the entire agreement of the parties with respect to the  
subject matter hereof and supersedes any and all prior agreements, writings or  
understandings between the parties with  
  
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respect to the subject matter hereof. Except as otherwise expressly provided  
herein, no amendment or modification to this Agreement shall be binding unless  
it shall be in writing and signed by all Members.  
  
 14.3 BINDING EFFECT. Subject to the provisions of this Agreement relating  
to transferability, this Agreement will be binding upon and inure to the benefit  
of the Members and their respective successors and assigns This Agreement may be  
executed by facsimile and in any number of counterparts, each of which when  
executed and delivered shall be an original, but all such counterparts shall  
constitute one and the same instrument. This Agreement, and any amendment  
thereof, shall not be effective as against M/I unless executed and delivered by  
at least one of the following officers on behalf of M/I (collectively, the  
"Authorized Officers"): Xxxxxx X. Xxxxxxxxxxxxx, its Chief Executive Officer and  
President; Xxxxxx Xxxxxxxxxxxxx, its Chief Operating Officer; Xxxxxxx X. Creek,  
its Senior Vice President, Chief Financial Officer and Treasurer; J. Xxxxxx  
Xxxxx, Senior Vice President, General Counsel, and Xxxxxxx X. Xxxx, Xx, its Vice  
President, Assistant General Counsel and Assistant Secretary. Execution and  
delivery by any one in addition to, or in lieu of, any of the Authorized  
Officers may be for M/Ts convenience but is not to be relied upon or effective  
as against M/I unless, as noted above, at least one of the Authorized Officers  
also executes and delivers this Agreement or any amendment thereof; provided,  
however, the foregoing shall not limit M/I's right, through a duly adopted  
resolution of M/I, to add to, reduce or substitute the above named Authorized  
Officers for any general or special purpose.  
  
 14.4 PARTIES IN INTEREST. Nothing in this Agreement shall confer any  
rights or remedies under or by reason of this Agreement on any Persons other  
than the Members and their respective successors and assigns nor shall anything  
in this Agreement relieve or discharge the obligation or liability of any third  
person to any party to this Agreement nor shall any provision give any third  
person any right of subrogation or action over or against any party to this  
Agreement.  
  
 14.5 PRONOUNS; STATUTORY REFERENCES. All pronouns and all variations  
thereof shall be deemed to refer to the masculine, feminine, or neuter, singular  
or plural, as the context in which they are used may require. Any reference to  
the Code, the Act, or other statutes or laws will include all amendments,  
modifications, or replacements of the specific sections and provisions  
concerned.  
  
 14.6 HEADINGS. All headings herein are inserted only for convenience and  
case of reference and are not to be considered in the construction or  
interpretation of any provision of this Agreement.  
  
 14.7 INTERPRETATION, BUSINESS DAYS. In the event any claim is made by any  
Member relating to any conflict, omission or ambiguity in this Agreement, no  
presumption or burden of proof or persuasion shall be implied by virtue of the  
fact that this Agreement was prepared by or at the request of a particular  
Member or its counsel. The term "Business Days" as used herein shall mean all  
days other than Saturdays, Sundays and Federal or State of Florida holidays.  
  
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 14.8 REFERENCES TO THIS AGREEMENT/APPROVALS. Numbered or lettered  
articles, sections and subsections herein contained refer to articles, sections  
and subsections of this Agreement unless otherwise expressly stated. Except as  
otherwise expressly stated herein, all consents and approvals by any party  
hereto shall be in the sole and absolute discretion of such party.  
  
 14.9 GOVERNING LAW/JURISDICTION. The laws of the State of Florida shall  
govern the interpretation and effect of this Agreement. Each Member hereby  
consents to the exclusive jurisdiction of the state courts sitting in Florida in  
any action on a claim arising out of, under or in connection with this Agreement  
or the transactions contemplated by this Agreement. Each Member further agrees  
that personal jurisdiction over it may be effected by service of process by  
certified mail addressed as provided in Section 14 of this Agreement, and that  
when so made shall be as if served upon him or her personally within the State  
of Florida.  
  
 14.10 DISPUTED MATTERS.  
  
 (a) In the event of a dispute ("Dispute") under this Agreement, the  
parties (collectively, the "Parties") intend that, prior to the commencement of  
any litigation proceedings, the Parties shall meet at the offices of a mutually  
acceptable engineer or attorney, as appropriate, to attempt to resolve any  
Dispute. The Parties shall have such a resolution meeting within ten (10)  
business days of written notice to the other Party invoking any Dispute  
provision, although there shall be no requirement that the meeting last for any  
length of time or to have further meetings. Each Party must appoint a duly  
authorized representative at each resolution meeting and the Parties must  
negotiate with diligence and in good faith to avoid any further Dispute. The  
Parties intend that M/I shall not delay or materially and adversely impact the  
construction or timing of the construction of Ashton's intended projects in  
connection with this Agreement. Likewise, the parties intend that Ashton shall  
not delay or materially and adversely affect any of M/I's projects in connection  
with this Agreement. Therefore, each Party has a mutual and identifiable  
interest in the timely, good faith and diligent cooperation between each other  
to ensure that each Party can pursue its projects in an orderly, cost-effective  
and timely manner. Notwithstanding anything in this Agreement to the contrary,  
if any Dispute remains unresolved, in whole or in part, after the initial  
meeting described above, any such continuing Dispute shall be resolved by  
binding arbitration, as hereinafter described. Within ten (10) days of written  
demand by one Party to the other requiring binding arbitration, each Party shall  
appoint a designated arbitrator with a minimum of seven (7) years of substantial  
experience in the Tampa, Florida, single-family development market, including,  
without limitation, an engineer, land planner, residential developer or  
attorney, provided any such proposed arbitrator shall not be affiliated with any  
party to this Agreement or involved in any transaction with the nominating  
party. Each Party shall notify the other as to the name and address of the  
nominated arbitrator within such ten (10) day period after any Party delivers  
written notice to the other Party demanding binding arbitration. The two (2)  
nominated arbitrators shall, during the following ten (10) days, meet and agree  
upon a third (3rd) arbitrator that is acceptable to both of the arbitrators  
appointed by M/I and Ashton, provided any such third arbitrator must also  
satisfy the requirements set forth above as to experience, non-affiliation and  
non-involvement. Within twenty (20) days of the selection of a third arbitrator,  
the three (3) arbitrators (collectively, the  
  
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"Arbitrators") shall make a determination on the merits of the dispute (the  
"Final Decision"), which Final Decision shall be made in writing. Each Party  
shall cooperate with the Arbitrators as they require. The Final Decision will be  
final and binding on M/I and Ashton for all purposes. When prepared to issue a  
ruling, the Arbitrators shall first so inform the Parties, who will have ten  
(10) business days to resolve the Dispute by a binding agreement between them.  
If the Parties resolve the Dispute, the Arbitrators will not make any award. If  
the Parties do not resolve the Dispute in such ten (10) business day period, the  
Arbitrators shall issue a written ruling on the eleventh (11th) day following  
the notification to the Parties that the Arbitrators were prepared to issue a  
ruling. The Arbitrators' written decision will resolve the Dispute, will include  
written statements of fact and conclusions of law, and will be final and  
binding. The phrase "final and binding" shall mean that it is not subject to any  
further controversy and may not be the subject of any lawsuit or other action  
between the Parties, shall not be appealable and that the Parties shall fully  
and timely implement the Final Decision. No Party may petition a court to  
correct or vacate the Final Decision. Any Final Decision will not prohibit  
either Party from later determining that a Dispute of the same or similar nature  
has occurred. Each Party will bear its own costs in connection with the  
arbitration until such time as a Final Decision is issued. Thereafter, the  
prevailing Party, as determined by the Arbitrators, will be entitled to recover  
all costs and reasonable attorneys' fees from the non-prevailing Party or such  
portion thereof as determined by the Arbitrators. If the Arbitrators do not make  
a determination of a prevailing Party pursuant to their Final Decision, then in  
that event, the Parties shall equally divide the costs and fees of the  
arbitration proceedings. A court of competent jurisdiction shall be directed to  
give full effect to the Parties' desire that the Final Decision in fact be final  
and binding.  
  
 (b) Should the Members be unable to agree upon any item requiring all  
Members' approval such as, by way of example and not of limitation, Major  
Decisions, but specifically excluding amendment of this Agreement or as  
otherwise provided in this Agreement, the Members shall meet and confer for a  
period of at least fifteen (15) days in an attempt to resolve such disagreement.  
If after such 30-day period, the Members have still not come to an agreement on  
the item in question, they shall enter into non-binding mediation for a period  
not to exceed thirty (30) days (commencing from the expiration of such previous  
15-day period) in an attempt to resolve the disagreement. If after such process,  
the Members are still in disagreement, then either Member may invoke the  
provisions of Section 12. During such periods of negotiation and mediation, the  
Members shall continue to comply with their respective obligations.  
  
 14.11 EXHIBITS. All Exhibits attached to this Agreement are incorporated  
and shall be treated as if set forth herein.  
  
 14.12 SEVERABILITY. If any provision of this Agreement or the application  
of such provision to any person or circumstance shall be held invalid, the  
remainder of this Agreement or the application of such provision to persons or  
circumstances other than those to which it is held invalid shall not be affected  
thereby.  
  
 14.13 ADDITIONAL DOCUMENTS AND ACTS. Each Member agrees to execute and  
deliver such additional documents and instruments and to perform such additional  
acts as may be necessary or appropriate to effectuate, carry out and perform all  
of the terms, provisions, and conditions of this Agreement and the transactions  
contemplated hereby.  
  
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 14.14 NO INTEREST IN COMPANY PROPERTY; WAIVER OF ACTION FOR PARTITION. No  
Member has any interest in specific property of the Company. Without limiting  
the foregoing, each Member irrevocably waives during the term of the Company any  
right that it may have to maintain any action for partition with respect to the  
property of the Company. This section is not intended, nor shall it serve, to  
limit the Day-to-Day Manager's right to the Manager Fee.  
  
 14.15 MULTIPLE COUNTERPARTS. This Agreement may be executed in two or more  
counterparts, each of which shall be deemed an original, but all of which shall  
constitute one and the same instrument.  
  
 14.16 TIME IS OF THE ESSENCE. All dates and times in this Agreement are of  
the essence.  
  
 14.17 REMEDIES CUMULATIVE; WAIVER OF RIGHT TO JURY TRIAL. The remedies  
under this Agreement are cumulative and shall not exclude any other remedies to  
which any Person may be lawfully entitled. To the greatest extent allowed by  
applicable law, each Member hereby knowingly, irrevocably and voluntarily waives  
any right any such Member may have to the right to a jury trial under any  
applicable law. The waiver was specifically bargained for and agreed to as part  
of the basis of the transaction herein contemplated.  
  
 14.18 COMPANY INDEMNIFICATION. The Company shall (to the extent of the  
Company's assets only) indemnify, defend and protect each Member and each  
Member's respective partners, members, shareholders, officers, directors,  
employees and agents from any losses, liabilities, damages, costs and expenses  
(including, without limitation, reasonable attorney's fees and disbursements)  
incurred by a Member or its respective officers, directors, employees and agents  
by reason of its acts or omissions which are for or on behalf of the Company,  
except for the failure of such Member or its respective partners, shareholders,  
officers, directors, employees and agents to act in accordance with the terms of  
this Agreement, or fraud, willful misconduct, gross negligence or any breach of  
a fiduciary duty by such Member or its respective partners, shareholders,  
officers, directors, employees and agents.  
  
 15. MEMBER'S RIGHT TO PURCHASE FINISHED LOTS. In the event either Member  
desires to sell or transfer any Finished Lot distributed to it hereunder prior  
to its construction of a residence thereon (a "Transferring Member"), and the  
other Member is not in default hereunder beyond any applicable notice and cure  
periods, then the other Member shall have a right to purchase such Finished Lot  
from the transferring Member as set forth below. Transferring Member shall give  
the other Member written notice of its intention to sell any Finished Lots to a  
third party, together with a copy of Transferring Member's agreement to sell  
such Finished Lots ("Sale Agreement"), and the other Member shall have twenty  
(20) days to elect by written notification to Transferring Member whether to  
purchase the Finished Lot(s) at the lower of the value of the Finished Lot(s)  
when distributed to the Transferring Member or the purchase price set forth in  
the Sale Agreement The "value of the Finished Lot" as used in the preceding  
sentence shall mean the Capital Contributions of the Transferring Member divided  
by the total number of Finished Lots allocated to the Transferring Member. The  
other Member shall so notify the Transferring Member in writing within such  
20-day period of its election to  
  
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purchase such Finished Lots at the selected price as set forth herein or be  
deemed to have waived its right only as to such Finished Lot(s) specified in the  
notice. If the other Member so exercises its purchase right, then such Member  
shall specify in its notice a closing date within thirty (30) days of the date  
of its notice. The purchase price shall be payable in cash at time of closing.  
The Transferring Member shall pay the costs of title insurance and documentary  
transfer taxes on the special warranty deed and the cost for recording the deed.  
All other closing costs shall be equally divided and all other customary closing  
procedures shall occur at such closing. Any violation of this paragraph shall  
constitute a default of the Transferring Member's obligations under this  
Agreement. The purchasing Member's obligations under this paragraph shall  
survive each and every transfer of a Finished Lot and the recordation of any  
deeds and the termination of this Agreement for any reason, and may be recorded  
as a restrictive covenant running with the land upon distribution of each  
Finished Lot. Notwithstanding anything in this Agreement to the contrary,  
neither Member shall be restricted in the event that the Members desire to  
assign amongst each other their right to any Finished Lots within the Project by  
separate written agreement.  
  
 16. VERIFICATION OF NET WORTH. Ashton represents and warrants to M/I that  
its current net worth is not less than $6,000,000.00 (such net worth to be  
calculated to exclude intercompany accounts other than demand obligations) and  
that it shall maintain a net worth of not less than 90% of such net worth, which  
obligation shall also apply to any Affiliate of Ashton that becomes a Member or  
the Day to Day Manager. Upon reasonable request, Ashton shall provide an annual  
certificate to M/I verifying its satisfaction of such covenant. M/I hereby  
represents and warrants that its current net worth is not less than  
$10,000,000.00 (such net worth to be calculated to exclude intercompany accounts  
other than demand obligations) and that it shall maintain a net worth of not  
less than 90% of such net worth. Upon reasonable request, M/I shall provide an  
annual certificate to Ashton verifying its satisfaction of such covenant.  
  
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 IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the  
date first above written.  
  
 M/I HOMES OF TAMPA LLC,  
 a Florida limited liability company  
/s/ Xxxxxxx X. Xxxxxxx  
-------------------------------  
Print Name: XXXXXXX X. XXXXXXX  
  
/s/ Xxxxxxx Xxxxx By: /s/ Xxxx Sikopski  
------------------------------ ----------------------------  
Print Name: XXXXXXX XXXXX Name: XXXX SIKOPSKI  
 Its: AREA PRESIDENT  
  
 AND  
  
/s/ Xxxxxxx X.[ILLEGIBLE]  
------------------------------  
Print Name: XXXXXXX X.[ILLEGIBLE]  
  
/s/ Xxxxxxx X. Xxxx By. /s/ Xxxxxx X. Xxxxxxxxxxxxx  
-------------------------- -----------------------------  
Print Name: XXXXXXX X. XXXX Name: XXXXXX X. XXXXXXXXXXXXX  
 Its: CEO & PRESIDENT  
  
 ASHTON TAMPA RESIDENTIAL, LLC,  
 a Nevada limited liability company  
  
-----------------------------------  
Print Name:  
 ------------------------  
  
 By:  
 ------------------------------  
-----------------------------------  
Print Name: Xxxxx X. Xxxxx, Division President  
 ------------------------  
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Print Name: Name:  
 ------------------------ ----------------------------------  
 Its:  
 ----------------------------------  
  
 ASHTON TAMPA RESIDENTIAL, LLC,  
 a Nevada limited liability company  
  
/s/ [ILLEGIBLE]  
------------------------------------  
Print Name: [ILLEGIBLE]  
 ------------------------  
  
 BY: /s/ Xxxxx X. Xxxxx  
 -----------------------------------  
------------------------------------ Xxxxx X. Xxxxx, Division President  
Print Name:  
 ------------------------  
  
/s/ Dovg Xxxxxx /s/ Dovg Xxxxxx  
------------------------------------ ------------------------------------  
DOVG XXXXXX DOVG XXXXXX  
  
/s/ Xxxxxx X. Xxxxxxx /s/ Xxxxxx X. Xxxxxxx  
------------------------------------ ------------------------------------  
Xxxxxx X. Xxxxxxx Xxxxxx X. Xxxxxxx  
  
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 EXHIBIT "A" - PULTE CONTRACT  
  
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 AGREEMENT FOR SALE OF LAND  
  
 THIS AGREEMENT FOR SALE OF LAND ("AGREEMENT") is made and entered into to  
be effective as of the Effective Date referenced in Section 22 hereof by and  
between PULTE HOME CORPORATION, a Michigan corporation ("SELLER"), and ASHTON  
TAMPA RESIDENTIAL, LLC, a Nevada limited liability company ("BUYER").  
  
 1. SALE AND PURCHASE. Seller hereby agrees to sell and convey to Buyer and  
Buyer hereby agrees to purchase from Seller, subject to the terms and conditions  
hereinafter set forth, all that certain parcel of land located in Pasco County,  
Florida (the "COUNTY"), known as "PALM COVE PHASE II" and more particularly  
described on EXHIBIT A attached hereto and incorporated herein, together with  
the following:  
  
 (a) All and singular the rights and appurtenances pertaining  
 thereto, including any right, title and interest of Seller in  
 and to adjacent streets, roads, alleys and rights-of-way; and  
  
 (b) Such other rights, interests and properties as may be  
 specified in this Agreement to be sold, transferred, assigned,  
 or conveyed by Seller to Buyer.  
  
The land described on EXHIBIT A and the rights, interests and other properties  
described above, are collectively called the "PROPERTY." At Buyer's option,  
title shall be conveyed by use of the metes and bounds description to be  
obtained as a result of the survey provided for below.  
  
 2. PURCHASE PRICE. The purchase price ("PURCHASE PRICE") to be paid for  
the Property shall be Eleven Million Eight Hundred Thirty Thousand and no/100ths  
Dollars ($11,830,000.00). The Purchase Price shall be paid by Buyer to Seller as  
follows:  
  
$99,500.00 Ninety-Nine Thousand Five Hundred and no/100ths Dollars  
 xxxxxxx money deposit (the "NON-REFUNDABLE DEPOSIT") to  
 be delivered to and held by Xxxx, Xxxx & Xxxxxxxxx,  
 P.A., Bank of America Plaza, 000 Xxxx Xxxxxxx Xxxxxxxxx,  
 Xxxxx 0000, Xxxxx, Xxxxxxx 00000 ("ESCROW AGENT" or  
 "TITLE AGENT," as applicable), within two (2) business  
 days after the Effective Date. Notwithstanding any  
 provision of this Agreement to the contrary, the  
 Non-Refundable Deposit shall be non-refundable to Buyer  
 except in the event of the Seller's default as provided  
 in Section 10 below.  
  
$500.00 Five Hundred and no/100ths Dollars xxxxxxx money deposit  
 (the "DEPOSIT") to be delivered to Escrow Agent within  
 two (2) business days after the Effective Date. At  
 Buyer's option, this deposit may be made in the form of  
 a Letter of Credit as referenced in Section 5 hereof.  
  
  
  
$11,730,000.00 Eleven Million Seven Hundred Thirty Thousand and  
 no/100ths Dollars cash payable at Closing by wired  
 federal funds for immediately available credit, plus or  
 minus prorations and Closing costs as set forth  
 hereinafter.  
  
$11,830,000.00 Total Purchase Price  
  
 In addition to the Purchase Price, Buyer shall pay Seller, so long as  
Seller has transportation impact fee credits available for transfer and as a  
condition precedent to the platting of lots on the Property, an amount equal to  
the product of the number of lots to be platted and the single family  
transportation impact fee otherwise payable to the County. Simultaneously with  
such payment, Seller shall assign to Buyer the transportation impact fee credits  
paid for by Buyer. Payment shall be made in the form of cash or wired federal  
funds for immediately available credit. This obligation to purchase impact fees  
shall be made a matter of public record by the recording of a memorandum thereof  
at Closing. The memorandum shall be released as to the lots to be platted upon  
receipt by Seller of payment for the transportation impact fee credits for the  
lots submitted to plat. Notwithstanding the foregoing requirement that Buyer  
purchase transportation impact fee credits from Seller, it is expressly  
understood that, to the extent Buyer receives transportation impact fee credits  
for that portion of Overpass Road which Buyer constructs, Buyer may first use  
the transportation impact fee credits which it receives and that are directly  
associated with its construction of Overpass Road before it is required to  
purchase transportation impact fee credits from Seller.  
  
 3. CLOSING DATE. The consummation of the transaction contemplated by this  
Agreement ("CLOSING") shall take place at 10:00 a.m. local time on December 22,  
2004, or such earlier date as Buyer may select upon ten (10) days' written  
notice to Seller. It is expressly acknowledged by Buyer that December 22, 2004,  
is the absolute outside date by which the transaction contemplated by this  
Agreement may close and that, if for any reason, the Closing fails to occur by  
December 22, 2004, Buyer shall no longer have any contractual right to acquire  
the Property unless such failure to close is a result of an event of default by  
Seller.  
  
 4. PLACE OF CLOSING. The Closing shall take place at a location designated  
by Seller in Hillsborough County, Florida.  
  
 5. DEPOSIT. All cash funds held in escrow shall be placed in an  
interest-bearing account at Bank of America, N.A., in Tampa, Florida, and all  
interest earned thereon shall be deemed to be a part of the Deposit. At Closing,  
the Deposit shall be paid to Seller and shall be applied to the Purchase Price.  
The Deposit shall constitute the xxxxxxx money securing Buyer's performance of  
this Agreement and shall be non-refundable upon expiration of the Inspection  
Period, unless Buyer earlier terminates this Agreement during the Inspection  
Period or is otherwise entitled to a return of the Deposit pursuant to the terms  
of this Agreement.  
  
 Seller and Buyer acknowledge and are aware that the Federal Deposit  
Insurance Corporation ("FDIC") insurance coverage for deposited funds applies  
only to a maximum amount for each individual depositor. Seller and Buyer further  
acknowledge and agree that Escrow Agent assumes no responsibility or liability  
whatsoever for, nor will they hold Escrow Agent responsible or liable for, any  
loss which arises from the fact that the amount of the Deposit  
  
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Funds in the special-interest bearing escrow account established by Escrow Agent  
will exceed $100,000.00 and that such excess amount in the account will not be  
insured by the FDIC.  
  
 In lieu of the Deposit being paid in cash, Buyer may deliver to Escrow  
Agent an irrevocable, unconditional letter of credit in order to secure Buyer's  
performance under this Agreement (the "LETTER OF CREDIT"). The Letter of Credit  
shall: (i) be issued by a financial institution acceptable to Seller, (ii)  
include an automatic pay provision in favor of Escrow Agent upon presentation of  
the Letter of Credit (which presentation need not be in person but may be  
delivered to the issuer by mail or other means of non-personal delivery from  
Escrow Agent), (iii) be for an initial term extending at least through January  
31, 2005, and (iv) be in a form and substance acceptable to Seller. In the event  
Buyer fails to extend and/or replace the Letter of Credit at least thirty (30)  
days prior to the expiration thereof, Buyer shall be deemed in default of this  
Agreement and shall not have the benefit of any grace or curative periods that  
may otherwise be afforded hereunder.  
  
 At the end of the Inspection Period, provided that Buyer has not otherwise  
terminated this Agreement within the Inspection Period pursuant to the  
provisions of paragraph 8, the Deposit shall be non-refundable to Buyer except  
as may be otherwise expressly provided to the contrary by the terms of this  
Agreement, and Escrow Agent shall continue to hold the Deposit until Closing,  
at which time the Deposit shall be applied to the Purchase Price. In the event  
the Closing does not occur, the Deposit shall be held and distributed in  
accordance with the terms of this Agreement.  
  
 In the event Buyer and Seller are in agreement that Seller is entitled to  
the Deposit, Buyer shall first have a period of five (5) days in which to  
deliver the cash-equivalent to Seller, and Escrow Agent, upon being notified by  
Seller that it has received the cash-equivalent Deposit, shall return the Letter  
of Credit to Buyer. Otherwise, in the event there is a dispute as to who is  
entitled to the Deposit and/or in the event the Letter of Credit has not been  
renewed or replaced at least thirty (30) days prior to its expiration with a  
renewal replacement Letter of Credit (or appropriate endorsement acceptable to  
Seller), Escrow Agent, upon written demand by Seller and with simultaneous  
written notice to Buyer, shall present the Letter of Credit for payment in which  
event the Deposit shall revert to a cash Deposit and the same shall be held by  
Escrow Agent pursuant to me terms and conditions of this Agreement Furthermore,  
in the event Escrow Agent places the Deposit with the appropriate court pursuant  
to the provisions to Section 35 hereof, the Letter of Credit shall be presented  
for payment without the need for direction or approval of either Seller or Buyer  
in which event the Deposit shall revert to a cash Deposit.  
  
 6. TITLE COMMITMENT AND POLICIES; SURVEY.  
  
 6.1. Title Commitment. Within seven (7) business days after the Effective  
Date of this Agreement, but in no event later than December 10, 2004, Seller  
shall, at Seller's expense, deliver to Buyer a title commitment for title  
insurance (ALTA Owner's Policy Form 1992) through Chicago Title Insurance  
Company ("TITLE COMPANY") covering the Property, issued by Title Agent, together  
with legible copies of all recorded documents referenced therein and a special  
tax search (the "COMMITMENT"), by which Commitment the title agent shall agree  
to issue to Buyer, upon recording the special warranty deed, a standard owner's  
ALTA policy in the amount of the full Purchase Price, without exception for any  
matters other than (i) current taxes;  
  
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(ii) applicable zoning and governmental regulations; (iii) easements and  
restrictions of record contemplated by the provisions of this Agreement or  
otherwise expressly approved by Buyer as a "PERMITTED EXCEPTION" hereunder, if  
any, and (iv) the standard survey exception unless Buyer provides a survey of  
the Property acceptable to the Title Company. Buyer shall have five (5) days  
after the date of actual receipt of the Commitment by Buyer and Buyer's attorney  
in which to examine the Commitment and to give written notice to Seller, or  
Seller's attorney, of its approval or disapproval in Buyer's sole discretion of  
any matter contained therein. If Buyer fails to give such notice, Buyer shall be  
deemed to have accepted the condition of title. Seller shall have five (5) days  
from the actual receipt of such notice of disapproval to cure the objections or  
defects so specified. If Seller is unable to correct such objections or defects  
to the Buyer's satisfaction, in Buyer's sole discretion, within said period of  
time, or if Seller elects not to correct such objections or defects and notifies  
Buyer of its election within five (5) days of Buyer's notice, then Buyer shall  
have the right within five (5) days after the end of either such said period, as  
applicable, to give notice terminating this Agreement and to receive the return  
of the Deposit, or to waive such objections or defects in writing. A failure to  
provide such notice shall be deemed to be an election by Buyer that it has  
waived any such objections or defects. Any such defect or objection waived as  
aforesaid shall become a "PERMITTED EXCEPTION" to title. The Commitment shall be  
updated by the Title Company at Seller's expense, prior to the Closing Date. Any  
title exception, other than a prior Permitted Exception hereunder, shall be  
treated as a title defect hereunder.  
  
 6.2. Current Survey. Within two (2) business days after the date  
hereof, Seller shall provide Buyer with the most recent survey of the Property  
in Seller's possession, custody, or control. Within fifteen (15) days after the  
date hereof, Buyer, at Buyer's expense, may obtain a current survey of the  
Property prepared by a duly licensed land surveyor ("SURVEY"). The Survey shall  
be certified to Title Company, Buyer, Buyer's attorneys, Seller, Seller's  
attorneys, and any lender. In the event the Survey, or any recertification  
thereof, shows any encroachments of any improvements upon, from, or onto the  
Property, any building set-back line or easement, or shows any evidence of use  
which indicates that an unrecorded easement may exist, except as may be  
acceptable to Buyer, in Buyer's reasonable judgment, the matter shall be treated  
in the same manner as a title defect under the procedure set forth above, and  
Buyer shall notify Seller of any such matters prior to the end of the Inspection  
Period. In the event Buyer elects not to obtain a Survey, it is expressly  
acknowledged that the Title Company will not remove the "standard" survey  
exceptions from the Commitment at Closing.  
  
 6.3. Permitted Exceptions. The Property shall be conveyed to Buyer  
subject to no liens, charges, encumbrances, exceptions or reservations of any  
kind or character other than those acceptable to Buyer under paragraph 6.1  
hereof ("PERMITTED EXCEPTIONS"). The items set forth in EXHIBIT B attached  
hereto and incorporated herein are acknowledged by Buyer to be Permitted  
Exceptions.  
  
 6.4. No Extension of Closing. Notwithstanding anything in this  
Section 6 to the contrary, it is expressly acknowledged that any and all  
curative opportunities provided herein shall in no event cause the Closing to be  
extended beyond December 22, 2004, and that, if a curative period set forth in  
this Section 6 would otherwise cause such extension, the curative and/or notice  
period afforded by this Section shall be reduced accordingly.  
  
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7. CLOSING PROCEDURES.  
  
 7.1. Seller's Obligations at Closing. At Closing, Seller shall do the  
 following:  
  
 (a) Execute, acknowledge and deliver to Buyer a special warranty  
 deed conveying the Property to Buyer subject to all matters of  
 record, including the Permitted Exceptions, which deed shall  
 be in form for recording with all required documentary stamps  
 in the proper amount affixed thereto, or provided for by  
 Seller at Seller's expense. The legal description of the  
 Property contained in the deed shall be identical to the legal  
 description of the Property contained in the Survey and the  
 Title Commitment.  
  
 (b) Deliver to Title Company and Buyer a certificate evidencing  
 Seller's good standing in both Michigan and Florida.  
  
 (c) Deliver to Title Company and Buyer evidence satisfactory to it  
 of Seller's authority to execute and deliver the documents  
 necessary or advisable to consummate the transaction  
 contemplated hereby.  
  
 (d) Execute and deliver to Title Company and Buyer duplicate  
 original copies of an affidavit of no liens satisfactory to  
 Title Company so as to cause Title Company to remove the  
 "gap," construction lien, parties in possession and unrecorded  
 easements standard exceptions from the Title Commitment.  
  
 (e) Execute and deliver to Title Company and Buyer a "non-foreign  
 person" affidavit in compliance with regulations issued by the  
 Internal Revenue Service.  
  
 (f) Execute and deliver to Title Company a memorandum in  
 recordable form evidencing the parties' agreement regarding  
 the purchase of transportation impact fee credits.  
  
 (g) Execute and deliver to Buyer a closing statement.  
  
 (h) Execute and deliver to Buyer a counterpart of the Developer's  
 Agreement referenced in Section 8 hereof.  
  
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 7.2. Buyer's Obligations at Closing. Subject to the terms,  
conditions and provisions hereof and contemporaneously with the performance by  
Seller of its obligations set forth in paragraph 7.1 above, Buyer shall deliver  
to Seller:  
  
 (a) The Purchase Price to be paid at Closing, plus or minus  
 prorations and Closing costs as set forth herein.  
  
 (b) Execute and deliver to Title Company a memorandum in  
 recordable form evidencing the parties' agreement  
 regarding the purchase of transportation impact fee  
 credits.  
  
 (c) An executed closing statement.  
  
 (d) Execute and deliver to Seller a counterpart of the  
 Developer's Agreement referenced in Section 8 hereof.  
  
 7.3. Closing Costs.  
  
 (a) Seller shall pay the following costs and expenses in  
 connection with the Closing:  
  
 (i) The escrow fees of the Escrow Agent, if any, and  
 the cost of the preparation of the closing  
 documents;  
  
 (ii) All documentary stamps which are required to be  
 affixed to the special warranty deed; and  
  
 (iii) The premium payable for the Title Commitment and  
 Title Policy issued pursuant thereto.  
  
 (b) Buyer shall pay the cost of recording the special  
 warranty deed and the agreement regarding the purchase  
 of transportation impact fee credits.  
  
 7.4. Proration of Taxes, Rents etc. Taxes for the year of Closing  
shall be prorated to the date of Closing. If the Closing shall occur before the  
tax rate is fixed for the then current year, the apportionment of taxes shall be  
upon the basis of the tax rate of the preceding year applied to the latest  
assessed valuation, and the parties agree to reprorate taxes for the year of  
Closing once such taxes become known. The provisions of this subparagraph shall  
survive the Closing.  
  
 8. FEASIBILITY STUDIES AND LICENSE TO ENTER. Buyer or Buyer's agents, at  
Buyer's expense, shall have the right to inspect the Property to determine  
whether, in Buyer's sole discretion, the Property is suitable for Buyer's  
intended use thereof. Such inspection may include, but shall not be limited to,  
engineering, environmental, and feasibility studies. If the Property is  
determined to be unsuitable, Buyer may terminate this Agreement by giving  
written  
  
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notice to Seller of such termination no later than 5:00 PM E.S.T. on December  
15, 2004 ("INSPECTION PERIOD"), upon receipt of which Escrow Agent shall return  
to Buyer the Deposit and the parties hereto shall be relieved of all further  
obligations hereunder, except as provided in this paragraph. If Seller has not  
received such notice of termination within said time period, the Property shall  
be deemed suitable for Buyer's intended use thereof. Buyer shall cause all  
persons or entities furnishing materials or services in connection with the  
inspection rights granted hereunder to be paid promptly and Buyer shall not  
allow the filing of any construction liens against the Property in connection  
with the inspection permitted hereunder. Buyer hereby holds Seller harmless from  
any damages or liabilities arising from the acts or omissions of Buyer or its  
agents in pursuing the activities permitted under this paragraph. Buyer shall  
restore any damage to the Property caused by Buyer's inspection. The provisions  
of this paragraph 8 shall survive Closing and any termination of this Agreement.  
If Buyer terminates this Agreement, Buyer shall furnish Seller with copies of  
all third-party non-proprietary reports, studies, analyses, surveys and other  
documentation prepared by or for Buyer with respect to the Property.  
  
 From and after the Effective Date, Seller shall make available to Buyer  
true and complete copies of the documents described on EXHIBIT "B" and all title  
insurance policies; appraisals; environmental, soil, engineering, subsurface and  
similar analyses; and other such third party studies and reports with respect to  
the Property that are in Seller's possession or control, including, without  
limitation, those received by Seller from Lennar Homes, Inc.  
  
 During the Inspection Period, Buyer and Seller agree to negotiate with  
each other in good faith with respect to a "DEVELOPER'S AGREEMENT" pursuant to  
which Seller will assign to Buyer at Closing certain rights and privileges under  
the homeowner's association documents and the Declaration of Covenants,  
Conditions and Restrictions, which are referenced in Section 36.1 hereof, and,  
pursuant to which, Buyer will assume certain responsibilities and obligations as  
they relate to the Property. The Developer's Agreement shall include Seller's  
assignment to Buyer of (i) all permits, authorizations, approvals, entitlements,  
impact fee credits and capacity reservations with respect to the Property,  
including density entitlements sufficient to allow Buyer to develop the Property  
in accordance with the Construction Drawings referenced in Section 24, but  
excluding the transportation impact fee credits referenced in Paragraph 2, and  
(ii) Seller's right, title and interest in the Construction Drawings. A copy of  
the proposed Developer's Agreement shall be delivered by Seller to Buyer within  
five (5) days after the Effective Date of this Agreement. In the event Seller  
and Buyer cannot agree upon the Developer's Agreement during the Inspection  
Period, either party may elect to terminate this Agreement in which event Escrow  
Agent shall return the Deposit to Buyer and the parties hereto shall be relieved  
of all further obligations hereunder except as otherwise provided in this  
Section 8.  
  
 9. BUYER'S DEFAULT. Except as to a wrongful failure timely to close on the  
acquisition of the Property, Buyer shall not be in breach or default hereunder  
unless Seller is not in default hereunder, and within ten (10) business days  
after the Buyer's receipt of notice of default. (i) Buyer fails to cure any  
material breach of any obligation of Buyer under this Agreement which is set  
forth in such notice or (ii) Buyer fails to complete its purchase of the  
Property. If any such failure continues beyond such cure period, the sole and  
exclusive remedy of Seller shall be to extinguish Buyer's right to purchase the  
Property and Seller shall be entitled to retain the Deposit as the agreed upon  
liquidated damages for Buyer's failure to perform. Seller  
  
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expressly waives any other remedy, at law or in equity, against Buyer. The  
parties agree and stipulate that as of the Effective Date, the exact amount of  
damages would be extremely difficult to ascertain and that the Deposit  
constitutes a reasonable and fair approximation of such damages and is not a  
penalty. Notwithstanding the foregoing, it is expressly acknowledged that the  
10-day curative opportunity provided to Buyer shall in no event cause the  
Closing to be extended beyond December 22, 2004, and that, if a 10-day curative  
period would otherwise cause such extension, the curative period afforded to  
Buyer by this Section shall be reduced accordingly.  
  
 With respect to any defaults which occur subsequent to Closing by Buyer  
relating to matters which, by their nature, must be completed or arise  
subsequent to Closing Seller shall have all rights and remedies afforded to it  
by Florida law, whether in law or in equity, except to the extent specific  
remedies may be set forth in an agreement which survives Closing, in which case  
the remedies set forth in such agreement shall be binding upon the parties, and  
the limitations with respect to remedies heretofore set forth in this paragraph  
9 shall no longer be applicable.  
  
 10. SELLER'S DEFAULT.  
  
 10.1. Default by Seller. Except as to a wrongful failure timely to  
close on the sale of the Property, Seller shall not be in default hereunder  
unless within ten (10) business days after receipt of written notice from Buyer,  
Seller fails to cure any of the following: (i) an any representation or warranty  
made by Seller herein is or becomes false in any material respect; (ii) any  
covenant or obligation made or undertaken by Seller hereunder is not  
substantially performed in the time specified for such performance; (iii) there  
is a failure of title not cured by Seller or waived by Buyer after the Title  
Commitment is reviewed and Permitted Exceptions are established, except for any  
subsequent matters authorized by paragraph 6.1 above; or (iv) Seller fails to  
convey title to the Property in accordance herewith or otherwise breaches any  
other provision of this Agreement when the Buyer is not in default hereunder.  
This ten (10) business day notice provision shall not apply to any title or  
survey matter as to which the notice and/or cure period already has expired  
hereunder. Buyer's sole and exclusive remedies hereunder shall be (i) specific  
performance, without any claim for delay damages or (ii) return of the Deposit  
Notwithstanding the foregoing it is expressly acknowledged that the 10-day  
curative opportunity provided to Seller shall in no event cause the Closing to  
be extended beyond December 22, 2004, and that, if a 10-day curative period  
would otherwise cause such extension, the curative period afforded to Seller by  
this Section shall be reduced accordingly.  
  
 With respect to any defaults which occur subsequent to Closing by Seller  
relating to matters which, by their nature, must be completed or arise  
subsequent to Closing, Buyer shall have all rights and remedies afforded to it  
by Florida law, whether in law or in equity, except to the extent specific  
remedies may be set forth in an agreement which survives Closing, in which case  
the remedies set forth in such agreement shall be binding upon the parties, and  
the limitations with respect to remedies heretofore set forth in this paragraph  
10 shall no longer be applicable.  
  
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 11. REPRESENTATIONS AND WARRANTIES OF BUYER.  
  
 11.1 Buyer's Organization. Buyer is duly organized, existing and in  
good standing under the laws of the State of Nevada, is authorized to transact  
business in the State of Florida, and has not filed, voluntarily or  
involuntarily, for bankruptcy relief within the last six months under the laws  
of the United States Bankruptcy Code, nor has any petition for bankruptcy or  
receivership been filed against Buyer within the last six months.  
  
 11.2 Buyer's Capacity. Buyer represents that it has capacity to  
enter into this Agreement and that the person signing below on behalf of Buyer  
represents that he or she is duly authorized to execute this Agreement and to  
bind the party for which he or she is signing.  
  
 12. REPRESENTATIONS, WARRANTIES, AND COVENANTS OF SELLER WITH RESPECT TO  
THE PROPERTY.  
  
 12.1 Seller's Representations, Etc. Seller expressly covenants,  
warrants and represents to Buyer the following matters:  
  
 (a) In addition to the obligations required to be performed  
 hereunder by Seller at the Closing, Seller shall perform  
 such other acts, and shall execute, acknowledge and  
 deliver subsequent to Closing such other instruments,  
 documents and other materials as the other may  
 reasonably request in order to effectuate the  
 consummation of the transaction contemplated herein and  
 to vest title to the Property in Buyer.  
  
 (b) Seller has received no written notice of any change  
 contemplated in any applicable laws, ordinances, or  
 restrictions, or of any judicial or administrative  
 action or of any action by adjacent landowners, which  
 would prevent or adversely affect Buyer's intended use  
 of the Property for single-family residential  
 development.  
  
 (c) Seller has received no written notice of any violation  
 of any applicable laws, ordinances, regulations,  
 statutes, rules and restrictions pertaining to and  
 affecting the Property.  
  
 (d) No other person, firm, corporation or other entity has  
 any right or option to acquire the Property or any  
 portion thereof.  
  
 (e) To Seller's knowledge, there are no parties in  
 possession of any portion of the Property, whether as  
 lessees, tenants at sufferance, trespassers or  
 otherwise.  
  
 (f) During the period between the date hereof and the  
 Closing, Seller agrees that it shall:  
  
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 (i) Comply with the requirements of all state and  
 municipal laws, ordinances, regulations and orders  
 relating to the Property;  
  
 (ii) Comply with all the terms, conditions and  
 provisions of all contractual arrangements  
 relating to the Property, if any, and make all  
 payments due thereunder, and  
  
 (iii) Neither negotiate nor enter into any contract  
 affecting the use or operation of the Property  
 which cannot be terminated without charge, cost,  
 penalty or premium on or before Closing.  
  
 (g) Except as may be otherwise referenced in this Agreement,  
 including, by way of example but not limitation, the  
 agreements referenced in Sections 8 and 36 hereof, there  
 will be no contracts, leases, service contracts,  
 maintenance contracts, operating agreements or other  
 contracts or agreements of any kind in existence with  
 respect to the Property which would be binding on Buyer  
 subsequent to Closing.  
  
 (h) To Seller's knowledge, no portion of the Property has  
 ever been used as a sanitary landfill or as a garbage  
 dump.  
  
 (i) Without investigation, Seller has no knowledge of any  
 toxic substances, hazardous wastes, hazardous  
 substances, or any other pollutants or dangerous  
 substances regulated pursuant to any applicable  
 environmental laws including, without limitation,  
 polychlorinated biphenyls (PCB's), oil, petroleum  
 products and fractions, vinyl chloride, asbestos, heavy  
 metals, radon, underground storage tanks (whether empty,  
 filled or partially filled with any substance, regulated  
 or otherwise), any substance or materials the presence  
 of which on the Property is prohibited by any  
 environmental laws or any other substance or material  
 which requires special handling or notification of any  
 federal, state or local governmental entity regarding  
 collection, storage, treatment or disposal being present  
 on the Property. Seller further represents that, to  
 Seller's knowledge, without investigation, no person has  
 used, generated, manufactured, stored or disposed of on,  
 under or about the Property or transported to or from  
 the Property any of the aforementioned materials (the  
 "HAZARDOUS MATERIALS"). For the purpose of this  
 Paragraph 4.1(i), Hazardous Materials shall also include  
 but not be limited to substances defined as "hazardous  
 substances," "hazardous materials," or '"toxic  
 substances" in the Comprehensive Environmental Response,  
 Compensation and Liability Act of 1980, as amended, 42  
 U.S.C. Sec. 9601, et seq.;  
  
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 the Hazardous Materials Transportation Act, 49 U.S.C.  
 Section 1801, et seq.; the Resource Conservation and  
 Recovery Act, 42 U.S.C. Section 6901 et seq.; and in the  
 regulations adopted and publications promulgated  
 pursuant to said laws.  
  
 (j) Seller will not make any application to change the  
 zoning classification of the Property in a manner which  
 will prevent Buyer from developing the Property for  
 single-family lots and attendant single-family  
 residential units.  
  
 (k) To Seller's knowledge, there are no legal actions, suits  
 or other legal or administrative proceedings, including  
 zoning, land use, condemnation or similar cases or  
 proceedings, presently existing against the Property or  
 against Seller's interest therein or against any third  
 party known to Seller affecting the Property.  
  
 (l) To Seller's knowledge, there are no uncured violations  
 of Federal, state or municipal laws, ordinances, orders,  
 regulations or requirements affecting the Property.  
  
 (m) Seller has full authority to execute this Agreement, to  
 comply with its terms and to consummate the transaction  
 contemplated herein. The person signing below on behalf  
 of Seller represents that he or she is duly authorized  
 to execute this Agreement and to bind Seller. The  
 execution by Seller of this Agreement and the  
 consummation by Seller of the transaction contemplated  
 hereby do not, and will not, constitute a violation of  
 any order, rule or regulation of any court or any  
 federal, state or municipal regulatory body or  
 administrative agency or any other governmental body  
 having jurisdiction over Seller or any portion of the  
 Property.  
  
 12.2 No Other Representations. No representation or inducement,  
whether oral or written, made prior hereto which is not included in this  
Agreement shall have any force or effect.  
  
 12.3 Representations and Warranties as Condition Precedent. As a  
condition precedent to Buyer's obligation to purchase the Property, the  
covenants, representations and warranties set forth in this Paragraph and  
elsewhere in this Agreement must be true and correct at the time of Closing,  
and, unless Seller shall have otherwise expressly notified Buyer in writing to  
the contrary, all representations, covenants and warranties of Seller contained  
herein shall be deemed to have been affirmed in their entirety as of the time of  
Closing.  
  
 12.4 Knowledge. As used in this paragraph 12, the term "knowledge"  
means the actual present knowledge of Xxxx X'Xxxxx, the Vice President of Land  
Development of Seller, without independent investigation or review of files.  
  
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 12.5 Survival. Seller hereby agrees to defend, indemnify, save and  
hold Buyer, its successors and assigns, harmless from and against any and all  
losses, claims, damages, liabilities, costs and expenses, including, without  
limitation, attorneys' fees and costs, related to, growing out of, or arising  
from any intentional breach of any representation or warranty of Seller set  
forth above. The foregoing indemnification shall survive the Closing for a  
period of one (1) year.  
  
 13. PATRIOT ACT REPRESENTATION. Seller and Buyer represent and warrant to  
each other that it is not acting, directly or indirectly, for or on behalf of  
any person, group, entity or nation named by the United States Treasury  
Department as a Specially Designated National and Blocked Person, or for or on  
behalf of any person, group, entity or nation designated in Presidential  
Executive Order 13224 as a person who commits, threatens to commit, or supports  
terrorism; and that they are not engaged in this transaction directly or  
indirectly on behalf of, or facilitating this transaction directly or indirectly  
on behalf of, any such person, group, entity or nation.  
  
 14. CAPTIONS. Descriptive headings are for convenience only and shall not  
control or affect the meaning or construction of any provision of this Agreement  
  
 15. ENTIRE AGREEMENT. This Agreement embodies and constitutes the entire  
understanding between the parties with respect to the transaction contemplated  
herein. All prior or contemporaneous agreements, understandings, representations  
and statements, oral or written, are merged into this Agreement. Neither this  
Agreement nor any provision hereof may be waived, modified, amended, discharged,  
or terminated except by an instrument in writing signed by the party against  
which the enforcement of such waiver, modification, amendment, discharge or  
termination is sought, and then only to the extent set forth in such instrument.  
  
 16. ASSIGNMENT. Neither party hereto shall have the right to assign this  
Agreement or any of its rights or obligations hereunder to any person,  
corporation or other entity without the prior written approval of the other  
party, which approval shall not be unreasonably withheld or delayed.  
Notwithstanding the foregoing, Buyer shall have the right to assign this  
Agreement to an entity that is controlled by, controls, or is under common  
control with, Buyer.  
  
 17. PARTIES BOUND. This Agreement shall be binding upon and shall inure to  
the benefit of the parties hereto and their successors and assigns, provided  
that no assignment shall be made except in accordance with the provisions of  
paragraph 16 hereof.  
  
 18. APPLICABLE LAW. This Agreement shall be governed by, and construed in  
accordance with, the laws of the State of Florida.  
  
 19. PARTIAL INAVALIDITY. In case any one or more of the provisions hereof  
shall for any reason be held to be invalid, illegal or unenforceable in any  
respect, such invalidity, illegality or unenforceability shall not affect any  
other provision hereof, and this Agreement shall be construed as if such  
invalid, illegal or unenforceable provision had never been contained herein.  
  
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 20. CONSTRUCTION OF AGREEMENT. The parties acknowledge that each has  
played an equal part in the negotiation and drafting of this Agreement, and in  
the event any ambiguities should be realized in the construction or  
interpretation of this Agreement, such ambiguities shall not be construed  
against either party solely on account of authorship.  
  
 21. COUNTERPARTS. This Agreement may be executed in several counterparts,  
each constituting a duplicate original, but all such counterparts constituting  
one and the same Agreement.  
  
 22. EFFECTIVE DATE. For the purpose of determining "the date hereof" or  
the Effective Date, as used in this Agreement, such date shall be the last date  
the Seller or Buyer executes this Agreement.  
  
 23. PARTIES. Whenever the context hereof shall so require, the singular  
shall include the plural, the male gender shall include the female gender and  
the neuter, and vice versa, and the use of the terms "include," "includes" and  
"including" shall be without limitation to the items which follow.  
  
 24. CONDITIONS PRECEDENT.  
  
 24.1. Conditions to Buyer's Obligations. The obligation of Buyer to  
consummate the Closing is subject to the satisfaction, as of Closing, of each of  
the following conditions (any of which may be waived in whole or in part in  
writing by Buyer at or prior to Closing):  
  
 (a) Buyer shall have been furnished with the Title  
 Commitment as required by paragraph 6.1 hereof, and such  
 commitment shall be (i) updated at Seller's expense at  
 Closing with such update showing no change in the status  
 of title as previously approved by Buyer, and (ii)  
 modified at Closing to delete the standard exceptions,  
 including those for taxes and assessments (other than  
 those that are not yet due and payable), matters of  
 survey (provided Buyer delivers to the Title Company a  
 current survey of the Properly that satisfies the  
 requirements of the Title Company), parties in  
 possession, construction liens, and matters appearing in  
 the "gap."  
  
 (b) Seller shall furnish to Buyer, at least three (3)  
 business days prior to Closing, copies of all deeds,  
 affidavits or other documents which will be executed and  
 delivered by Seller at Closing, which documents shall be  
 subject to the reasonable approval of Buyer's attorney.  
  
 (c) Seller shall have (i) obtained the approval of the  
 construction drawings relating to the Property and  
 prepared by Xxxxx & Associates, Inc. from Pasco County,  
 Florida (the "CONSTRUCTION DRAWINGS"), (ii) obtained  
 from SWFWMD the Status of Permit  
  
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 Application "completeness" letter for the Property and  
 (iii) completed the mass grading of the individual lots  
 as depicted on the Construction Drawings.  
  
 (d) Any environmental assessment of the Property obtained by  
 Buyer prior to the Closing shall not (i) disclose that  
 the Property contains any Hazardous Materials, or (ii)  
 recommend a Phase II assessment.  
  
 (e) There shall exist no governmental moratorium, delay or  
 hindrance that would impair Buyer's ability to timely  
 obtain the approved Construction Drawings or building  
 permits with respect to the Property.  
  
 With respect to subsection (c) above, Buyer acknowledges and agrees that  
it will be responsible for obtaining the required Construction Drawings once  
they are approved by Pasco County and Buyer is prepared to commence its  
development of the Property with the understanding that any and all fees  
necessary to be paid as a prerequisite for Pasco County to release the subject  
plans will be paid by Buyer including, by way of example but not limitation, any  
and all prepayments of water and sewer impact fees that may be charged by Pasco  
County.  
  
 25. TIME. The parties acknowledge that time is of the essence for each  
time and date specifically set forth in this Agreement. Without limiting the  
generality of the foregoing, it is expressly understood that Seller shall have  
no obligation to close the transaction contemplated by this Agreement and Buyer  
shall have no right to acquire the Property subsequent to December 22, 2004.  
  
 26. NOTICES. All notices which are required or permitted hereunder must be  
in writing and shall be deemed to have been given, delivered or made, as the  
case may be (notwithstanding lack of actual receipt by the addressee) (i) upon  
hand delivery, (ii) three (3) business days after having been deposited in the  
United States mail, certified or registered, return receipt requested,  
sufficient postage affixed and prepaid, (iii) one (1) business day after having  
been deposited with an expedited, overnight courier service (such as by way of  
example but not limitation, U.S. Express Mail, Federal Express or Airborne), or  
(iv) upon delivery of a facsimile transmission which is confirmed on the  
sender's facsimile machine as having been sent to the recipient at the proper  
telecopy number, addressed to the party to whom notice is intended to be given  
at the address set forth below:  
  
 Seller: Pulte Home Corporation  
 Northdale Executive Center  
 0000 Xxxxxxxxx Xxxxxxxxx  
 Xxxxx 000  
 Xxxxx, Xxxxxxx 00000  
 Attn: Xx. Xxxx X'Xxxxx  
 Telephone No. (000)000-0000  
 Facsimile No. (000) 000-0000  
  
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 with a courtesy Xxxx, Xxxx & Xxxxxxxxx, P.A.  
 copy to: Bank of America Plaza, Suite 3700  
 000 Xxxx Xxxxxxx Xxxxxxxxx  
 Xxxxx, Xxxxxxx 00000  
 Attn: Xxxxxx X. Xxxxxxxxx, III, Esq.  
 Telephone No. (000) 000-0000  
 Facsimile No. (000) 000-0000  
  
 Buyer: Ashton Tampa Residential, LLC  
 000 X. Xxxxxxxxx Xxxxx, Xxxxx 0000  
 Xxxxx, Xxxxxxx 00000  
 Attn: Xx. Xxxxx X.Xxxxx  
 Telephone No. (000) 000-0000  
 Facsimile No. (000) 000-0000  
  
 and  
  
 Xxxxxx Xxxxx Homes  
 0000 Xxxxxxx Xxxxxx, Xxxxxxxx 000  
 Xxxxx 000  
 Xxxxxxx, Xxxxxxx 00000  
 Attn. Xx. Xxxxxx Xxxxxx  
 Telephone No. (000) 000-0000  
 Facsimile No. [ILLEGIBLE]  
  
 with a courtesy Xxxx Xxxxxx, Professional Association  
 copy to: Bank of America Plaza, Suite 4100  
 000 Xxxx Xxxxxxx Xxxxxxxxx  
 Xxxxx, Xxxxxxx 00000  
 Attn: Xxxxxxx X. Xxxxxx, Esq.  
 Telephone No. (000) 000-0000  
 Facsimile No. (000)000-0000  
  
 Escrow Agent: Xxxx, Xxxx & Xxxxxxxxx, P.A.  
 Bank of America Plaza, Suite 3700  
 000 Xxxx Xxxxxxx Xxxxxxxxx  
 Xxxxx, Xxxxxxx 00000  
 Attn: Xxxxxx X. Xxxxxxxxx, III, Esq.  
 Telephone No. (000)000-0000  
 Facsimile No. (000) 000-0000  
  
 The failure by any party to deliver a courtesy copy as referenced above  
shall not constitute a default under the terms of this Agreement nor shall it  
create a defect in any notice which is otherwise properly given. Furthermore, it  
is agreed that, if any party hereto is  
  
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represented by legal counsel, such legal counsel is authorized to deliver  
written notice directly to the other party on behalf of his or her client, and  
the same shall be deemed proper notice hereunder if delivered in the manner  
hereinabove specified.  
  
Any party hereto may, at any time by giving ten (10) days written notice to the  
other party hereto, designate any other address in substitution of the foregoing  
address to which such notice shall be given and other parties to whom copies of  
all notices hereunder shall be sent.  
  
 27. ATTORNEY'S FEES, ETC. Should either party employ an attorney or  
attorneys to enforce any of the provisions hereof, or to protect its interest in  
any matter arising hereunder, or to recover damages for the breach hereof, the  
party prevailing shall be entitled to recover from the other party all  
reasonable costs, charges and expenses, including attorneys' fees, the value of  
time charged by paralegals and/or other staff members operating under the  
supervision of an attorney, and other legal costs, expended or incurred in  
connection therewith, before, during and subsequent to any litigation, including  
arbitration and appellate proceedings, bankruptcy or similar debtor/creditor  
proceedings, and proceedings to enforce any indemnity agreement herein  
contained.  
  
 28. [Intentionally Omitted].  
  
 29. CONDEMNATION. If, after the date hereof and prior to Closing, all or a  
part of the Property is subjected to a bona fide threat of condemnation by a  
body having the power of eminent domain or is taken by eminent domain or  
condemnation (or sale in lieu thereof), Buyer may, by written notice to Seller,  
elect to cancel this Agreement no later than ten (10) days after notice of such  
occurrence, in which event both parties shall be relieved and released of and  
from any further liability hereunder, and the Deposit made by Buyer hereunder  
shall forthwith be returned to Buyer, whereupon this Agreement shall become null  
and void and be considered canceled. If no such election is made within said  
10-day period, this Agreement shall remain in full force and effect and the  
purchase contemplated herein, less any interest taken by eminent domain or  
condemnation, shall be effected with no further adjustment, and upon Closing  
Seller shall assign, transfer, and set over to Buyer all of the right, title and  
interest of Seller in and to any awards that have been or that may thereafter be  
made for such taking.  
  
 30. WAIVER OF BREACH. The waiver of one or more defaults by any party to  
this Agreement shall not be deemed a waiver of any subsequent default of the  
same or any other provision of this Agreement under the same or other  
circumstances.  
  
 31. BROKERAGE COMMISSIONS. Seller and Buyer warrant each to the other that  
they have not dealt with any real estate broker or salesperson with regards to  
this transaction. Seller agrees to indemnify and hold Buyer harmless from any  
and all commissions claimed by any broker or third party arising by virtue of  
this transaction whose commissions might legally arise from acts of Seller.  
Buyer agrees to hold Seller harmless from any and all commissions claimed by any  
broker or third party arising by virtue of this transaction whose commissions  
might legally arise from acts of Buyer.  
  
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 32. DISCLAIMER OF WARRANTIES. Except as specifically set forth in this  
Agreement, Seller has not made and does not make any warranty or representation,  
express or implied as to the merchantability, quantity, quality, physical  
condition or operation of the Property, zoning, the suitability or fitness of  
the Property or any improvements thereon, if any, for any specific or general  
use or purpose, the availability of water, sewer or other utility service, or  
any other matter affecting or relating to the Property, its development or use  
including but not limited to, the Property's compliance with any environmental  
laws. Neither party is relying on any statement or representations made by the  
other not embodied herein. Buyer hereby expressly acknowledges that no such  
warranties and representations have been made, except as expressly set forth in  
the Agreement; that it shall be Buyer's obligation to obtain and pay for all  
commitments for water, sewer and other utilities and to pay the commitment,  
impact, tap in or other fees and charges for such utilities (no such fees have  
been paid by Seller). Buyer acknowledges that the provisions of this Agreement  
for inspection and investigation of the Property are adequate to enable Buyer to  
make Buyer's own determination with respect to merchantability, quantity,  
quality, physical condition or operation of the Property, zoning, suitability or  
fitness of the Property or any improvements thereon, if any, for any specific or  
general use or purpose, the availability of water, sewer or other utility  
service or any other matter affecting or relating to the Property, its  
development or use, including without limitation, the Property's compliance with  
any environmental laws. Buyer further acknowledges it has inspected the Property  
or has caused such inspection to be made and is thoroughly familiar and  
satisfied therewith, and agrees to take the Property in its physical condition,  
"AS IS, WHERE IS, WITH ALL FAULTS" as of the date of Closing, subject to the  
express conditions of this Agreement. Seller shall not be liable or bound in any  
manner by any verbal or written statement, representation or information made or  
given by anyone pertaining to the Property, unless specifically set forth in  
this Agreement.  
  
 In particular, but without in any way limiting the foregoing, Buyer hereby  
releases Seller from any and all responsibility, liability and claims for or  
arising out of the presence on or about the Property (including in the soil,  
air, structures and surface and subsurface water) of materials, wastes or  
substances that are or become regulated under or that are or become classified  
as toxic or hazardous, under any Environmental Law, including without  
limitations, petroleum, oil, gasoline or other petroleum products, byproducts or  
waste. The foregoing release shall not apply, however, if the presence on or  
about the Property of such materials, wastes or substances was caused by Seller,  
nor shall the foregoing release be construed as limiting Seller's  
indemnification obligations in Section 12.5. As used herein, "ENVIRONMENTAL LAW"  
shall mean, as amended and in effect from time to time, any federal, state or  
local statute, ordinance, rule, regulation, judicial decision, or the judgment  
or decree of a governmental authority, arbitrator or other private adjudicator  
by which Buyer or the Property is bound, pertaining to the environment,  
including, without limitation, the Comprehensive Environmental Response,  
Compensation, and Liability Act of 1980, as amended, the Hazardous Materials  
Transportation Act, as amended, the Resource Conservation and Recovery Act, as  
amended, the Clean Air Act, as amended and in the statutes together with the  
rules adopted and guidelines promulgated pursuant thereto, and all similar  
statutes together with rules adopted and guidelines promulgated pursuant to the  
foregoing.  
  
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 33. MEMORANDUM OF AGREEMENT. Neither this Agreement nor a Memorandum of  
this Agreement shall be filed of record by either party.  
  
 34. RADON GAS DISCLOSURE. The following language is required by law in any  
contract involving the sale or lease of any building within the State of  
Florida:  
  
 "RADON GAS: Radon is a naturally occurring radioactive gas that,  
 when it has accumulated in a building in sufficient quantities, may  
 present health risks to persons who are exposed to it over time.  
 Levels of radon that exceed federal and state guidelines have been  
 found in buildings in floridal. Additional information regarding  
 radon and radon testing may be obtained from your county public  
 health unit."  
  
 35. ESCROW AGENT.  
  
 35.1. Duties. It is agreed that the duties of Escrow Agent are only  
such as are herein specifically provided, being purely ministerial in nature,  
and that Escrow Agent shall incur no liability whatever except for willful  
misconduct or gross negligence so long as Escrow Agent has acted in good faith.  
The Seller and Buyer release Escrow Agent from any act done or omitted to be  
done by Escrow Agent in good faith in the performance of Escrow Agent's duties  
hereunder.  
  
 35.2. Responsibilities. Escrow Agent shall be under no  
responsibility with respect to any Deposit placed with it other than faithfully  
to follow the instructions herein contained. Escrow Agent may consult with  
counsel and shall be fully protected in any actions taken in good faith, in  
accordance with counsel's advice. Escrow Agent shall not be required to defend  
any legal proceedings which may be instituted against. Escrow Agent in respect  
to the subject matter of these instructions unless requested to do so by Seller  
and Buyer and indemnified to the satisfaction of Escrow Agent against the cost  
and expense of such defense. Escrow Agent shall not be required to institute  
legal proceedings of any kind. Escrow Agent shall have no responsibility for the  
genuineness or validity of any document or other item deposited with Escrow  
Agent, and shall be fully protected in acting in accordance with any written  
instructions given to Escrow Agent hereunder and believed by Escrow Agent to  
have been signed by the proper parties.  
  
 35.3. Sole Liability, Escrow Agent assumes no liability hereunder  
except that of a stakeholder. If there is any dispute as to whether Escrow Agent  
is obligated to deliver the Deposit, or as to whom the Deposit is to be  
delivered, Escrow Agent will not be obligated to make any delivery of the  
Deposit, but in such event may hold the Deposit until receipt by Escrow Agent of  
an authorization in writing signed by all of the persons having an interest in  
such dispute, directing the disposition of the sum, or in the absence of such  
authorization, Escrow Agent may hold the Deposit until the final determination  
of the rights of the parties in an appropriate proceeding. If such written  
authorization is not given, or proceedings for such determination are not begun  
and diligently continued, Escrow Agent may, but is not required, to bring an  
appropriate action or proceeding for leave to place the Deposit with the court,  
pending  
  
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such determination. Once Escrow Agent has tendered into the registry or custody  
of any court of competent jurisdiction all money and/or property in its  
possession under this Agreement, or has made delivery of the Deposit in any  
other manner provided for herein, Escrow Agent shall be discharged from all  
duties and shall have no further liability hereunder as Escrow Agent.  
  
 It is expressly understood that Xxxx, Xxxx & Xxxxxxxxx, P.A., represents  
Seller in connection with this transaction. In the event of any disputes as to  
which party is entitled to the Deposit or in the event any disagreement shall  
arise as a result of this Agreement or the transaction contemplated hereby,  
Escrow Agent shall not be excluded from representing Seller by virtue of its  
serving as Escrow Agent pursuant to this Agreement. Buyer shall not object to,  
or request a disqualification of, Escrow Agent, as counsel for Seller.  
  
 36. OTHER CONTRACTUAL MATTERS.  
  
 36.1. Homeowner's Association/Restrictive Covenants. Seller owns and  
is developing contiguous real property for a residential project known as "Palm  
Cove". As part of the overall Palm Cove project, which will comprise both the  
Property and Seller's additional land, Seller has created or will create a  
homeowner's association and has recorded a Declaration of Covenants, Conditions  
and Restrictions of Palm Cove of Xxxxxx Chapel, both of which will encumber the  
Property as Permitted Exceptions and as covenants running with the land. In this  
regard, pursuant to the laws of the State of Florida, the homeowner's  
association/community disclosure statement required by Section 689.26, Florida  
Statutes is hereby deemed to have been provided.  
  
 36.2. Overpass Road. In conjunction with the development of the  
Property, Buyer covenants and agrees that it will construct the remaining  
extension to Overpass Road, which is included in the approved Construction  
Drawings, as well as entry monumentation and landscaping pursuant to the  
monument and landscaping conceptual plan provided by and approved by Seller.  
  
 36.3. Development Requirements. In conjunction with the development  
of the Property, Buyer covenants and agrees that it will limit its horizontal  
development and construction to what is depicted on the approved Construction  
Drawings for the Property and that all platting(s) of the Property shall be  
restricted to only what is shown on the approved Construction Drawings. No  
modification of the Construction Drawings shall be made by Buyer without the  
prior written consent of Seller, which consent may be withheld by Seller in the  
exercise of its sole discretion. An appropriate reference to the aforesaid  
development requirements shall be incorporated into the deed referenced in  
paragraph 7.1(a) of this Agreement.  
  
 36.4. Section 1445.  
  
 (a) The parties shall comply with the provisions of Code  
Section 1445 and applicable Treasury Regulations issued thereunder. If the  
Seller is a U.S. person for Code Section 1445 purposes, then on demand of the  
Buyer and prior to dosing the Seller shall provide the Buyer with a certificate  
of non-foreign status in the manner provided in Treasury Regulations  
  
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Section 1.1445-2. If the Seller provides the Buyer with such certificate, and if  
the Buyer is otherwise permitted to rely on such certificate under those  
Regulations, the Buyer shall not withhold under Code Section 1445.  
  
 (b) If the Seller is a 'foreign person' as defined by the  
Code, the Buyer generally is required to withhold 10% of the gross sales price  
from the Seller at closing and to pay the withheld amount over to the Internal  
Revenue Service (IRS) unless an applicable exemption from withholding or a  
limitation on the amount to be withheld is available. To the extent that the  
cash to be paid over to the Seller at closing is insufficient to cover the  
Buyer's withholding obligation, the Seller shall provide to the Buyer at closing  
cash equal to such excess for purposes of making such withholding payment. If  
the Seller's federal income tax on the gain is less than the applicable  
withholding amount, the Seller may make advance application to the IRS for  
reduced withholding and, if granted, the Buyer shall withhold only the  
authorized reduced amount. If such ruling has not been received by closing, the  
parties at closing shall enter into an escrow agreement reasonably satisfactory  
to the Buyer and Seller pending receipt of the ruling, provided that at closing  
the Seller shall have the obligation to provide to the escrow agent from the  
closing proceeds (or from the Seller's other resources if necessary) cash equal  
to the maximum required withholding, with any excess withholding being  
refundable to the Seller upon receipt of a favorable ruling from the IRS.  
  
 (c) Buyer and Seller understand that the IRS requires the  
Buyer and the Seller to have a U.S. federal taxpayer identification number and  
to supply that number on the foregoing forms. A foreign individual may acquire  
an International Taxpayer Identification Number for this purpose. Since it may  
take several weeks to receive the number after application and the IRS will not  
process these forms without the actual number, a party lacking a TIN is advised  
to apply immediately. The Seller's TIN is 00-000-0000. The Buyer's TIN is 90-  
0193359.  
  
 37. [Intentionally Omitted].  
  
 38. FACSIMILE COPIES. Facsimile copies of this Agreement and the  
signatures thereon shall have the same force and effect as if the same were  
original documents. Facsimile signatures are acceptable and shall be deemed to  
be original signatures.  
  
 [THE REMAINDER OF THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK.  
 THE SIGNATURE PAGE FOLLOWS ON THE NEXT SUCCEEDING PAGE.]  
  
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 [SIGNATURE PAGE TO  
 AGREEMENT FOR SALE OF LAND]  
  
 IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be  
executed as of the dates set forth below.  
  
WITNESSES: SELLER:  
  
 PULTE HOME CORPORATION, a  
 Michigan corporation  
  
/s/ [ILLEGIBLE] By: /s/[ILLEGIBLE]  
----------------- -----------------------  
Name: [ILLEGIBLE] Name: [ILLEGIBLE]  
 (Print or Type Name) Title: [ILLEGIBLE]  
  
 Date: December 3, 2004  
/s/ Xxx X. XxXxxx III  
-------------------------  
Name: Xxx X. XxXxxx III  
 (Print or Type Name)  
  
 BUYER:  
  
 ASHTON TAMPA RESIDENTIAL, LLC,  
 a Nevada limited liability company  
  
\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
 (Print or Type Name) Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
  
\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date: December \_\_\_, 2004  
Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
 (Print or Type Name) AND  
  
  
\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
 (Print or Type Name) Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
  
\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date: December \_\_\_, 2004  
Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
 (Print or Type Name)  
  
  
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 [SIGNATURE PAGE TO  
 AGREEMENT FOR SALE OF LAND]  
  
 IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be  
executed as of the dates set forth below.  
  
WITNESSES: SELLER:  
  
 PULTE HOME CORPORATION, a  
 Michigan corporation  
  
/s/ [ILLEGIBLE] By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
----------------- Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
Name: [ILLEGIBLE] Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
 (Print or Type Name)  
 Date: December \_\_\_\_\_\_, 2004  
\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
 (Print or Type Name)  
  
  
 BUYER:  
  
 ASHTON TAMPA RESIDENTIAL, LLC,  
 a Nevada limited liability company  
  
/s/ Xxxxxx X. Xxxx By: /s/ [ILLEGIBLE]  
-------------------- --------------------------  
Name: Xxxxxx X. Xxxx Name: [ILLEGIBLE]  
 (Print or Type Name) Title: [ILLEGIBLE]  
  
 Date: December 3, 2004  
  
/s/ Xxxx Xxxxx  
---------------------  
Name: Xxxx Xxxxx  
 (Print or Type Name) AND  
  
/s/ [ILLEGIBLE] By: /s/ [ILLEGIBLE]  
-------------------------- ------------------------------  
Name: [ILLEGIBLE] Name: [ILLEGIBLE]  
 (Print or Type Name) Title: [ILLEGIBLE]  
  
 Date: December 6, 2004  
  
/s/ [ILLEGIBLE]  
--------------------------  
Name: [ILLEGIBLE]  
 (Print or Type Name)  
  
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