

*J.C. Stephenson*  
Jay C. Stephenson  
Clerk of Superior Court Cobb Cty. Ga.

*Michael*

After recording, please return to:  
Michael E. Leavey  
Dorough & Dorough, LLC  
Two Decatur TownCenter, Suite 520  
125 Clairemont Avenue  
Decatur, Georgia 30030

CROSS REFERENCE: Deed Book: 13266  
Page: 2564

*12/5/02*

*2nd*

**AMENDMENT TO DECLARATION OF  
COVENANTS AND RESTRICTIONS  
FOR WESTCHESTER COMMONS**

THIS AMENDMENT (hereinafter referred to as "Amendment") is made this 14<sup>th</sup> day of March, 2005 by WESTCHESTER COMMONS TOWNHOME ASSOCIATION, INC., a Georgia nonprofit corporation (hereinafter referred to as "Association").

**WITNESSETH**

**WHEREAS**, Pulte Home Corporation, a Michigan corporation, as Declarant executed that certain Declaration of Covenants and Restrictions for Westchester Commons, which was recorded on June 1, 2000 in Deed Book 13266, Page 2564, *et seq.*, Cobb County, Georgia records (hereinafter as supplemented and/or amended from time to time, the "Declaration"); and

**WHEREAS**, the Association is a nonprofit corporation organized under the Georgia Nonprofit Code to be the Association named in the Declaration to have the power and authority set forth therein; and

**WHEREAS**, the Association and the members desire to amend the Declaration as set forth herein and intend for this Amendment to be prospective only; and

**WHEREAS**, pursuant to Article X of the Declaration entitled "Amendment," the terms, provisions, covenants and restrictions of the Declaration may be amended upon the approval of such amendment by: (a) those members of the Association who own, in the aggregate, no-fewer than sixty-seven percent (67%) of the Townhomes not owned by the Declarant; (b) the Declarant,

if the Declarant shall then own any Townhomes or any other portion of the overall Property; and (c) HUD and VA, if the Class B membership has not terminated as provided in Article IV, Section 3 of this Declaration; and

**WHEREAS**, the Declarant no longer owns any Townhomes or any other portion of the overall Property and the Class B membership has been terminated as provided in Article IV, Section 3 of the Declaration; and

**WHEREAS**, members of the Association who own, in the aggregate, no-fewer than sixty-seven percent (67%) of the Townhomes not owned by the Declarant approved of this A amendment either by casting a vote in favor of this Amendment at a meeting of the members of the Association duly called for such purpose, or by signing a written approval of this Amendment after the date on which such meeting was held; and

**WHEREAS**, attached hereto as Exhibit "A" and incorporated herein by reference is the sworn statement of the Secretary of the Association certifying that this Declaration was approved as provided in Article X of the Declaration;

**NOW THEREFORE**, the undersigned hereby adopt this Amendment to the Declaration of Covenants and Restrictions for Westchester Commons, hereby declaring that all the property now or hereafter subject to the Declaration shall be held, conveyed, encumbered, used, occupied and improved subject to the Declaration, amended as follows:

1.

The Declaration is hereby amended by adding to Article V, Section 2 entitled "Personal Obligation of Members," after Subsection (b) thereof, a new Article V, Section 2, Subsection (c) to read as follows:

(c) Specific assessments as provided in Article V, Section 8 hereof.

2.

The Declaration is hereby amended at Article V, Section 7, entitled "Effect of Non-Payment of Assessments; Remedies of the Association," by deleting in the first sentence of subsection (a) the words "any annual or special assessment, or any installment of any annual or special assessment" from the first sentence and replacing the deleted words with the words "any annual, special or specific assessment, or any installment of any annual, special or specific assessment", so as amended, the first sentence of Article V, Section 7(a) shall read as follows:

In the event that any member of the Association shall fail to pay, within ten (10) days after the date the same is due and payable, any annual, special or specific assessment, or any installment of any annual, special or specific assessment, which is payable by him to the Association, the entire amount of such assessment, including the portion thereof which would otherwise be payable in installments,

may be declared by the Board of Directors to be immediately due and payable in full to the Association.

3.

The Declaration is hereby amended by adding to the end of Article V, entitled "Assessments," a new Article V, Section 8 entitled "Specific Assessments," to read as follows:

Section 8. Specific Assessments. The Board shall have the power to levy specific assessments as, in its discretion, it shall deem appropriate. Failure of the Board to exercise its authority under this Section shall not be grounds for any action against the Association and shall not constitute a waiver of the Board's right to exercise its authority under this Section in the future with respect to any expenses, including an expense for which the Board has not previously exercised its authority under this Section. Fines levied pursuant to this Declaration and the costs of maintenance performed by the Association for which the Owner is responsible shall be specific assessments. The Board of Directors may also specifically assess Owners for Association expenses as follows: (a) expenses of the Association which benefit less than all of the Townhomes may be specifically assessed equitably among all of the Townhomes which are benefited according to the benefit received; and (b) expenses of the Association which benefit all Townhomes, but which do not provide an equal benefit to all Townhomes, may be assessed equitably among all Townhomes according to the benefit received.

4.

The Declaration is hereby amended by adding to the end of Article VII, entitled "Architectural Control and Restrictions," a new Article VII, Section 10 entitled "Leasing," to read as follows:

Section 10. Leasing. In order to protect the equity of the individual record owner, whether one or more Persons, of the fee simple title to any Townhome located within the Overall Property (excluding, however, any Person holding such interest merely as security for the performance or satisfaction of any obligation) (hereinafter the "Owner"), to carry out the purpose for which the Association was formed by preserving the character of Westchester Commons as a homogenous residential community of predominantly Owner-occupied Townhomes, by preventing the Westchester Commons community from assuming the character of a renter-occupied neighborhood, and to comply with the eligibility requirements for financing in the secondary mortgage market insofar as such criteria provide that the project be substantially Owner-occupied, leasing of Townhomes shall be governed by the restrictions imposed by this Section. The Board of Directors shall have authority to make and enforce reasonable rules and regulations in order to enforce this Section, including the right to impose fines for violations constituting a lien upon the Townhome sold or leased pursuant to this Declaration. Except as provided herein, the leasing of Townhomes shall be prohibited.

(a) Definitions.

(i) Leasing shall mean the regular occupancy of a Townhome by any person other than the Owner, for which the Owner receives any consideration or benefit including, but not limited to, a fee, rent, service, gratuity or emolument. For purposes hereof, the following shall not constitute leasing: (i) occupancy by a roommate of an Owner occupant, (ii) occupancy by a member of an Owner's family, (iii) occupancy by one or more wards if the Townhome is owned by their legal guardian, or (iv) occupancy by one or more beneficiaries of a trust if the Townhome is owned in trust by the trustee.

(ii) Applicability - Grandfathered Townhome. Those Townhomes which are being leased as of the date this Amendment is recorded in the Cobb County, Georgia land records (hereinafter the "Effective Date") are for all purposes herein a "Grandfathered Townhome", and may continue to be leased, provided the tenant complies with all regulations pertaining to the use of the Townhome. All Owners of Grandfathered Townhomes shall file a copy of the lease agreement in effect as of the Effective Date with the Board.

(iii) Open Leasing Status.

A) All Grandfathered Townhomes shall be in Open Leasing Status until such time as title to said Townhome is conveyed to any person or entity other than the person or entity holding record title as of the Effective Date. Upon the transfer of title described in this subparagraph, the Townhome shall automatically be converted to Restricted Leasing Status regardless of the continued occupancy by the same lessee.

B) Any Townhome that is designated as being in "Open Leasing Status" shall authorize a Townhome Owner to lease said Townhome at any time. For purposes of this subparagraph only, a lease shall continue, regardless of extensions or renewals, for so long as the existing lessee remains as lessee. The lease shall terminate at such time as the existing lessee ceases to be lessee. Upon the transfer of title of a Townhome in Open Leasing Status to any person or entity other than the person or entity holding record title on the Effective Date, the Townhome shall automatically be converted to Restricted Leasing Status regardless of the continued occupancy by the same lessee. Open Leasing Status may be conferred upon a Townhome as provided in subparagraph (b) below.

(iv) Restricted Leasing Status. Any Townhome that is designated as being in "Restricted Leasing Status" shall be subject to the restrictions on leasing contained in subparagraph (b) below. All Townhomes that are not Grandfathered Townhomes shall be in Restricted Leasing Status unless converted to Open Leasing Status as provided in subparagraph (b) below.

(b) General. No Owner of a Townhome in Restricted Leasing Status may lease his or her Townhome if ten percent (10%) or more of the Townhomes in the Overall Property are in Open Leasing Status, except as provided in subparagraph (c) below for cases of undue hardship. Any Owner of a Townhome in Restricted Leasing Status may apply in writing to the Board of Directors for conversion to Open Leasing Status in accordance with rules and regulations promulgated by the Board of Directors. Upon receipt of such written application, the Townhome shall be placed at the end of a waiting list for conversion to Open Leasing Status. At such times as less than ten percent (10%) of the Townhomes are in Open Leasing Status, the Board shall notify the Owner of the Townhome at the top of the waiting list of its conversion to Open Leasing Status, and such Owner shall have ninety (90) days within which to lease the Townhome or it shall automatically revert to Restricted Leasing Status. Any Townhome in Open Leasing Status shall automatically be converted to Restricted Leasing Status if the Townhome is not subject to a lease in compliance with subparagraph (d) below for ninety (90) or more consecutive days.

(c) Undue Hardship. Notwithstanding the provisions of subparagraph (b) above, the Board of Directors shall be empowered to allow reasonable leasing of a Townhome upon application in accordance with this Section to avoid undue hardship, including, but not limited to the following situations: (1) a Townhome Owner must relocate his or her residence outside the Atlanta metropolitan area and cannot, within six (6) months from the date that the Townhome was placed on the market, sell the Townhome except at a price below the current appraised market value, after having made reasonable efforts to do so; (2) the Owner dies and the Townhome is being administered by his or her estate; or (3) the Owner takes a leave of absence or temporarily relocates and intends to return to reside in the Townhome, in which case the Townhome Owner must reapply every year for renewal of the hardship exception. Those Owners who have complied with this subparagraph (c), have demonstrated that the inability to lease their Townhome would result in undue hardship, and have obtained the requisite written approval of the Board may lease their Townhomes for such duration as the Board reasonably determines is necessary to prevent undue hardship.

Any Owner who believes that he or she must lease his or her Townhome to avoid undue hardship shall submit a written application to the Board setting forth the circumstances necessitating the leasing, a copy of the proposed lease, and such other information as the Board may reasonably require. Leasing in the case of undue hardship shall be permitted only upon the Board's written approval of the Owner's application. When an application is approved, the Owner shall provide the Board with the name and phone number of the lessee and the Owner's address other than at the Townhome and other such information as the Board may reasonably require within ten (10) days after a lease has been signed by both parties.

The Board shall have the power to make and enforce reasonable rules and regulations and to fine, in accordance with the Declaration and Bylaws, in order to enforce the provisions of this subparagraph. Any transaction which does not comply with this Section shall be voidable at the option of the Board of Directors.

(d) Leasing Provisions. Such leasing as is permitted by this Section shall be governed by the following provisions:

(i) General. Townhomes may be leased only in their entirety; no fraction or portion may be leased without prior written Board approval. All leases shall be in writing. There shall be no subleasing or assignment of leases unless approved in writing by the Board. All leases must be for an initial term of at least one (1) year, except with written Board approval, which shall not be unreasonably withheld in cases of undue hardship. The Owner must provide the lessee copies of the Declaration, Bylaws, and the rules and regulations and the lease form shall provide that the Owner has made available to the lessee copies of the Declaration, Bylaws, and the rules and regulations.

(ii) Notice. Within ten (10) days after executing a lease agreement for the lease of a Townhome, the Owner shall provide the Board with a copy of the lease and the name of the lessee and all other people occupying the Townhome, the phone number of the lessee and the Owner's address other than at the Townhome and other such information as the Board may reasonably require.

(iii) Liability for Assessments, Use of Association Property, and Compliance with Declaration, Bylaws, and Rules and Regulations. Each Owner covenants and agrees that any lease of a Townhome shall contain the following language and agrees that if such language is not expressly contained therein, then such language shall be incorporated into the lease by existence of this covenant, and the lessee, by occupancy of the Townhome, agrees to the applicability of this covenant and incorporation of the following language into the lease:

(A) Compliance with Declaration, Bylaws, and Rules and Regulations. Lessee shall abide and comply with all provisions of the Declaration, Bylaws, and rules and regulations adopted pursuant thereto and shall control the conduct of all other occupants and guests of the leased Townhome in order to ensure such compliance. Owner agrees to cause all occupants of his or her Townhome to comply with the Declaration, Bylaws, and the rules and regulations adopted pursuant thereto and is responsible for all violations caused by such occupants, notwithstanding the fact that such occupants of the Townhome are fully liable and may be sanctioned for any violation of the Declaration, Bylaws, and rules and regulations adopted pursuant thereto. In the event that the lessee or a person living with the lessee violates the Declaration, Bylaws, or a rule or regulation for which a fine is imposed, notice of the violation shall be given to the Owner and the lessee, and such fine may be assessed against the lessee in accordance with the Bylaws. If the fine is not paid by the lessee within the time period set by the Board of Directors, the Owner shall pay the fine upon

notice from the Association of the lessee's failure to pay the fine. Unpaid fines shall constitute a lien against the Townhome.

Any violation of the Declaration, Bylaws, or rules and regulations adopted pursuant thereto by the lessee, any occupant, or any guest of the lessee, is deemed to be a default under the terms of the lease and authorizes the Owner to terminate the lease without liability and to evict the lessee in accordance with Georgia law.

(B) Use of Association Property. The Owner transfers and assigns to the lessee, for the term of the lease, any and all rights and privileges that the Owner has to use the Association Property of the Association, including, but not limited to, the use of any and all recreational facilities and other amenities, if any.

(C) Liability for Assessments. When a Townhome Owner who is leasing his or her Townhome fails to pay any annual or special assessment or any other charge for a period of more than thirty (30) days after it is due and payable, then the delinquent Owner hereby consents to the assignment of any rent received from the lessee during the period of delinquency, and, upon request by the Board of Directors, lessee shall pay to the Association all unpaid annual and special assessments and other charges payable during and prior to the term of the lease and any other period of occupancy by lessee. However, lessee need not make such payments to the Association in excess of, or prior to the due dates for, monthly rental payments unpaid at the time of the Board's request. All such payments made by lessee shall reduce, by the same amount, lessee's obligation to make monthly rental payments to lessor. If lessee fails to comply with the Board's request to pay assessments or other charges, lessee shall pay to the Association all amounts authorized under the Declaration as if lessee were an Owner. The above provision shall not be construed to release the Owner from any obligation, including the obligation for assessments, for which he or she would otherwise be responsible.

(e) Applicability of this Section. This Section shall not apply to any leasing transaction entered into by the Association or the holder of any First Mortgage on a Townhome who becomes the Owner of a Townhome through foreclosure or any other means pursuant to the satisfaction of the indebtedness secured by such Mortgage.

5.

The Declaration is hereby amended by deleting Article XI, Section 6 of the Declaration, entitled "Enforcement," in its entirety and replacing it with a new Article XI, Section 6 to read as follows:

Section 6. Enforcement. Each Owner and occupant of a Townhome and the invitees, guests, and tenants thereof shall comply strictly with the Bylaws, rules and regulations and use restrictions, as amended or modified from time to time, and with the covenants, conditions, easements and restrictions set forth in this Declaration, the recorded subdivision plat(s) for the Westchester Commons community, if any, and in the deed to such Owner's Townhome. The Board of Directors may impose fines or other sanctions for violations of the foregoing, which shall be collected as provided herein for the collection of assessments. Failure to comply with this Declaration, the Bylaws or the rules and regulations shall be grounds for an action to recover sums due for damages or injunctive relief or both, maintainable by the Association or an aggrieved Owner. Failure by the Association or any Owner to enforce any of the foregoing shall in no event be deemed a waiver of the right to do so thereafter. The Association shall have the right to record in the appropriate land records a notice of violation of the Declaration, Bylaws, rules and regulations, use restrictions or design guidelines and to assess the cost of recording and removing such notice against the Townhome of the Owner who is responsible (or whose occupants are responsible) for violating the foregoing.

The Board of Directors shall not impose a fine (a late charge shall not constitute a fine) unless and until the following procedure is followed:

(a) Written notice shall be delivered to the member by personal delivery at the address for the Townhome or first-class or certified mail sent to the address of the member shown on the Association's records, specifying:

(1) the nature of the violation, the fine or suspension to be imposed and the date, not less than ten (10) days from the date of the notice, that the fine or suspension will take effect;

(2) that the violator may, within ten days from the date of the notice, request a hearing before the Board of Directors regarding the fine or suspension imposed;

(3) the name, address and telephone numbers of a person to contact to request a hearing;

(4) that any statements, evidence, and witnesses may be produced at the hearing; and



(5) that all rights to have the fine or suspension reconsidered are waived if a hearing is not requested within ten days of the date of the notice.

(b) If a hearing is requested, it shall be held before the Board of Directors in executive session, and the violator shall be given a reasonable opportunity to be heard. The minutes of the meeting shall contain a written statement of the results of the hearing. The fine or suspension shall run from the date that a decision is made by the Board of Directors at the conclusion of the hearing or such later date as the Board of Directors may determine.

6.

The Declaration is hereby amended by adding to the end of Article XI, entitled "Miscellaneous," a new Section 8, entitled "No Discrimination," to read as follows:

Section 8. No Discrimination. No action shall be taken by the Association or the Board of Directors which would discriminate against any person on the basis of race, creed, color, national origin, religion, sex, familial status or disability.

7.

The Declaration is hereby amended by adding to the end of Article XI, entitled "Miscellaneous," a new Section 9, entitled "Security," to read as follows:

Section 9. Security. THE BOARD OR THE ASSOCIATION MAY, FROM TIME TO TIME, TAKE STEPS TO PROVIDE SOME MEASURE OF SECURITY ON THE ASSOCIATION PROPERTY; HOWEVER, NEITHER THE BOARD NOR THE ASSOCIATION IS A PROVIDER OF SECURITY AND SHALL HAVE NO DUTY TO PROVIDE ANY SECURITY ON THE ASSOCIATION PROPERTY OR OTHERWISE. THE OBLIGATION TO PROVIDE SECURITY LIES SOLELY WITH EACH TOWNHOME OWNER INDIVIDUALLY. NEITHER THE BOARD, THE ASSOCIATION NOR ANY OWNER GUARANTEES OR ASSURES TO ANY OTHER OWNER OR TO ANY OTHER PARTY WHOMSOEVER THAT ANY SECURITY MEASURES INSTALLED BY THE BOARD OR THE ASSOCIATION WILL IN ANY MANNER WHATSOEVER PROVIDE PERSONAL PROTECTION OR SECURITY TO ANY OWNER OR OCCUPANT, THEIR PERSONAL POSSESSIONS OR TO GUESTS OR INVITEES, OR TO ANY OTHER PERSON, AND EACH OWNER, BY THE ACCEPTANCE OF ITS DEED, SHALL HAVE ASSUMED THE ENTIRE RISK AS BETWEEN SUCH OWNER AND THE BOARD OR THE ASSOCIATION FOR ANY LOSS OR DAMAGE TO PERSON OR PROPERTY WITHIN THE ASSOCIATION PROPERTY ARISING FROM ANY DEFICIENCY, FAILURE OR DEFECT IN ANY SECURITY MEASURES OR OTHERWISE.

IN WITNESS WHEREOF, the Association has caused this Amendment to be executed under seal the day and year first above written.

ASSOCIATION: **WESTCHESTER COMMONS  
TOWNHOME ASSOCIATION, INC.,**  
a Georgia nonprofit corporation

By: *William C. Johnson*  
Name: William C. Johnson  
President

Attest: *Lenia R. Mills*  
Name: LENIA R. MILLS  
Secretary

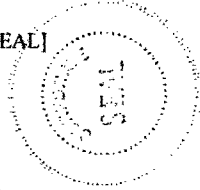
Signed, sealed and delivered  
in the presence of

*[Signature]*

Witness

*[Signature]*  
Notary Public

[AFFIX CORPORATE SEAL]



[AFFIX NOTARY SEAL]



EXHIBIT "A"

Sworn Statement of Secretary of  
Westchester Commons Townhome Association, Inc.

STATE OF GEORGIA

COUNTY OF COBB

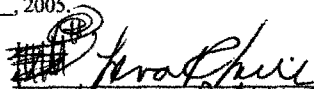
Re: Westchester Commons

Personally appeared before me, the undersigned deponent who, being duly sworn, deposed and said on oath that:

1. Deponent is the Secretary of Westchester Commons Townhome Association, Inc.
2. Deponent is duly qualified and authorized to make this Affidavit and knows the facts contained herein of his or her own personal knowledge.
3. The foregoing Amendment to Declaration of Covenants and Restrictions for Westchester Commons was approved by the required vote of those members of the Association who own, in the aggregate, no fewer than sixty-seven percent (67%) of the Townhomes not owned by the Declarant as provided by law and the Declaration.
4. Deponent makes this Affidavit pursuant to Official Code of Georgia Annotated Section 44-2-20.

This the 14<sup>th</sup> day of March, 2005.

By:  
Name:

  
LENA R. MILLS

Sworn to and subscribed before me  
this 14<sup>th</sup> day of March, 2005.

