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CROSS REFERENCE: Deed Book: 13266  
Page: 2564

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

THIS AMENDMENT (hereinafter referred to as "Amendment") is made this 24 day of NOVEMBER, 2009 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; as amended by that certain First Amendment to Declaration of Covenants and Restrictions for Westchester Commons, recorded on June 1, 2000 in Deed Book 13266, Page 2593, *et seq.*, aforesaid records; as further amended by that certain Amendment to Declaration of Covenants and Restrictions for Westchester Commons, recorded on March 31, 2005 in Deed Book 14132, Page 428, *et seq.*, aforesaid records (hereinafter as supplemented and/or amended from time to time, collectively referred to as the "Declaration"); and

**WHEREAS**, the Association is a nonprofit corporation organized under the Georgia Nonprofit Corporation 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 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 Third 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 I, a definition of the term "Deck" to read as follows:

"Deck" shall mean the wood (or other material) deck, including without limitation, any structural and non-structural posts; footings; railings; stair stringers, risers and treads; privacy panels; floor joists; floor decking; support brackets; and similar attachments and appurtenances to such deck, constructed within the Easement Area annexed to a Townhome as part of the original construction of such Townhome, as the same may be repaired and/or reconstructed from time to time.

2.

The Declaration is hereby amended at Article III, Section 2, entitled "Members' Rights in Association Property," by deleting the first sentence thereof in its entirety and replacing it with a new first sentence of Article III, Section 2 to read as follows:

Every owner of any Townhome shall have a non-exclusive right and easement of enjoyment and use in and to all portions of the Association Property, except for Easement Areas, Driveways, Porticos, Stoops, Patios and Decks (which shall be subject to an easement for the exclusive use of the owner of the Townhome to which the same are attached or annexed, as provided for elsewhere in this Declaration), and such right and easement shall be appurtenant to, and shall pass with, the title to the Townhome(s) owned by such owner.

3.

The Declaration is hereby amended at Article III, Section 7, entitled "Driveways, Porticos, Stoops and Patios," by deleting the first sentence thereof in its entirety and replacing it with a new first sentence of Article III, Section 7, entitled "Driveways, Porticos, Stoops, Patios and Decks," to read as follows:

Section 7. Driveways, Porticos, Stoops, Patios and Decks. There shall be appurtenant to each Townhome an easement for the exclusive use of that part of the Association Property which consists of the Driveway that is annexed to such Townhome, the Stoop that is annexed to such Townhome, and, for those Townhomes to which a Portico is attached, an easement for the exclusive use of that part of the Association Property over which such Portico is located and for the repair, maintenance and replacement of the columns supporting such Portico. In addition, there shall be appurtenant to each Townhome to which a Patio is appurtenant, an easement for the exclusive use of that part of the Easement Area over which such Patio is located and for the repair, maintenance and replacement of such Patio; and there shall be appurtenant to each Townhome to which a Deck is appurtenant, an easement for the exclusive use of that part of the Easement Area over which such Deck is located and for the repair, maintenance and replacement of such Deck.

4.

The Declaration is hereby amended by deleting subsection (a) of Article III, Section 8, entitled "Maintenance of Association Property", in its entirety and replacing it with a new Article III, Section 8(a), to read as follows:

(a) Except for the maintenance of each Easement Area which is required to be performed by the owner of the Townhome to which such Easement Area is annexed (as provided for in Section 2 of Article VIII of this Declaration),

and except for the maintenance and repair of the Driveways, Porticos, Stoops, Patios and Decks which is required to be performed by the owner of the Townhome to which such Driveway, Portico, Stoop, Patio and Deck are attached or annexed (as provided for in Section 1 of Article VIII of this Declaration), the Association shall be responsible for the maintenance and repair of all Association Property.

5.

The Declaration is hereby amended by deleting Article VIII, Section 1, entitled "Maintenance and Repair of Townhomes, Driveways, Porticos, Stoops and Patios", in its entirety and replacing it with a new Article VIII, Section 1, entitled "Maintenance and Repair of Townhomes, Driveways, Porticos, Stoops, Patios and Decks", to read as follows:

Section 1. Maintenance and Repair of Townhomes, Driveways, Porticos, Stoops, Patios and Decks. The owner of each Townhome shall be obligated to maintain and repair the entirety of his Townhome, including all walls and the roof of such Townhome and including any Fire Sprinkler System serving his Townhome. The owner of each Townhome shall also be obligated to maintain and repair the Driveway, Stoop and any Portico which is attached to his Townhome, and the Patio which is annexed to his Townhome, including all brick, stucco and concrete portions of the same. In addition to the foregoing, except to the extent the same is performed by the Association as provided below, the owner of each Townhome shall be obligated to maintain and repair the Deck which is attached to his Townhome, which maintenance and repair shall include, without limitation, maintenance and repair of any structural posts; footings; stair stringers, risers and treads; floor joists; floor decking; support brackets; and similar attachments and appurtenances; and periodic staining on a schedule determined from time to time by the Board of Directors. Owners shall keep in a neat, clean and sanitary condition any Driveway, Stoop, Patio or Deck serving such owner's Townhome. Such maintenance and repair work shall be performed at the sole cost and expense of the owner of such Townhome. All exteriors of all Townhomes and all Driveways, Stoops, Porticos, Patios and Decks shall be maintained in a condition which is satisfactory to the Board of Directors. In no event shall any change be made in the exterior appearance of any Townhome, Driveway, Stoop, Portico, Patio or Deck (including, without limitation, painting, staining, and/or the application of any brick, stucco, paneling or other siding), unless such change has been first approved in writing by the Board of Directors. The Board of Directors shall have the right to adopt rules for the placement of any items on the Driveways, Stoops, Patios and Decks and all items placed on the Driveways, Stoops, Patios and Decks must comply with the terms of such rules.

Notwithstanding the foregoing provisions of this Section 1, it shall be the duty of the Association to obtain and maintain in effect bonds for the termite infestation of the Townhomes.

All owners and occupants shall have an affirmative duty and responsibility to inspect the Association Property and all portions of the community not contained within a Townhome, including without limitation, any Deck attached to the Townhome of such owner and/or occupant, for any defects, perils or other unsafe conditions relating to the use and enjoyment thereof. In addition to the foregoing, each owner and occupant shall promptly report to the Association or its authorized agent any defect or need for repairs for which the Association is responsible. The Association shall not be liable to any owner or such owner's occupants or the licensees or invitees of either, for any damage or injury caused in whole or in part by the Association's failure to discharge its responsibilities under this Declaration where such damage or injury is not the foreseeable and natural result of the Association's failure to discharge its responsibilities or where the Association has not been put on notice of the defect or need for repairs for which the Association is responsible and from which the damage or injury arises.

## 6.

The Declaration is hereby amended by adding a new subsection (c) to the end of Article VIII, Section 2 of the Declaration, entitled "Maintenance of Easement Areas," to read as follows:

(c) The Association shall be responsible for the maintenance, repair and replacement, of a portion of the Decks being the non-structural posts; railings, including stair railings; and privacy panels attached thereto. Such maintenance obligation of the Association shall include, without limitation, periodic staining on a schedule determined from time to time by the Board of Directors. All other maintenance, repair and replacement of the Decks shall be the responsibility of the owner of the Townhome to which the Deck is appurtenant. In no event shall the owner of any Townhome or any other person change or alter in any respect any Deck appurtenant to a Townhome or portion thereof, unless with the prior written approval of the Board of Directors. Without limiting the generality of the foregoing, in no event shall any person paint any Deck or portion thereof or stain any Deck or portion thereof a different color without prior approval of the Board. Notwithstanding anything herein to the contrary, the Association shall have the right, but not the obligation, to assume additional maintenance obligations with respect to the Decks where the Board has determined that such action would benefit the owners.

## 7.

The Declaration is hereby amended by deleting Article VIII, Section 4, entitled "Failure to Maintain", in its entirety and replacing it with a new Article VIII, Section 4, entitled "Failure to Maintain", to read as follows:

Section 4. Failure to Maintain. In the event the owner of any Townhome shall fail to maintain any portion of such Townhome, or the Driveway, or the Stoop or any Portico that is attached to such Townhome, or

the Patio or Deck that is annexed to the same, as the case may be, or any Easement Area that is annexed to the same, all as required under the terms and provisions of this Article VIII, the Board of Directors shall have the right, exercisable by it or through its agents or employees and after giving the owner of such Townhome at least five (5) days notice and an opportunity to correct the unsatisfactory condition, to enter upon the Townhome, Driveway, Portico, Stoop, Patio, Deck, and/or Easement Area, as applicable, and correct the unsatisfactory condition. The owner of the Townhome upon which, or upon the Driveway, Portico, Stoop, Patio, Deck, and/or Easement Area attached or annexed to which, such maintenance work is performed by the Association (or its agents or employees) shall be personally liable to the Association for all direct and indirect costs as may be incurred by the Association in connection with the performance of such maintenance work, and the liability for such costs shall be secured by all of the liens, and shall be subject to the same means of collection, as are the assessments and charges provided for in Article V of this Declaration. In addition, all such costs shall be paid to the Association by such owner at the same time as the next due annual assessment payment, as provided in Section 4 of Article V of this Declaration, or at such earlier time, and in such installments, as the Board of Directors shall determine.

8.

Unless otherwise defined herein, the words used in this Amendment shall have the same meaning as set forth in the Declaration.

9.

This Amendment shall be effective only upon being recorded in the records of the Clerk of Superior Court of Cobb County, Georgia and shall be enforceable against current Owners of a Townhome subject to the Declaration.

10.

Except as herein modified, the Declaration shall remain in full force and effect.

[SIGNATURES ON FOLLOWING PAGE]

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: Ben Rawlings  
Name: BEN RAWLINGS  
President

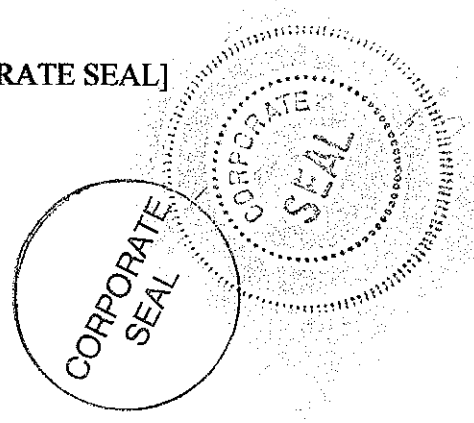
Attest: Randy Le Grand  
Name: RANDY LE GRAND  
Secretary

Signed, sealed and delivered  
in the presence of

[AFFIX CORPORATE SEAL]

Judith S. Martin  
Witness

[Signature]  
Notary Public



[AFFIX NOTARY SEAL]

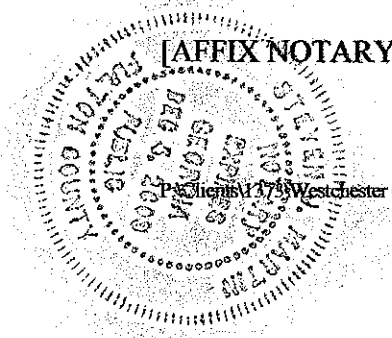


EXHIBIT "A"

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

STATE OF GEORGIA

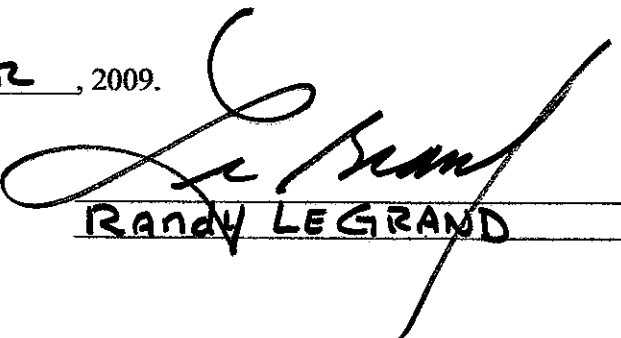
COUNTY OF COBB

Re: Westchester Commons

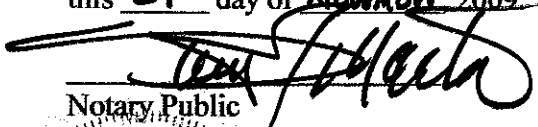
Personally appeared before me, the undersigned deponent who, being duly sworn, deposed and said on oath that:

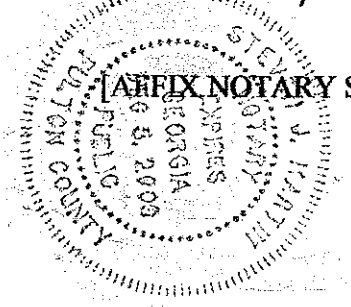
1. Deponent is the Secretary of Westchester Commons Townhome Association, Inc.
2. Deponent is duly qualified and authorized to make this Affidavit and knows the facts contained herein of his or her own personal knowledge.
3. The foregoing Third Amendment to the Declaration of Covenants and Restrictions 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. Any notices required by the Declaration, the Bylaws and Georgia law were properly given.
5. Deponent makes this Affidavit pursuant to Official Code of Georgia Annotated Section 44-2-20.

This the 24 day of NOVEMBER, 2009.

Signed:   
Print Name: RANDY LEGRAND

Sworn to and subscribed before me  
this 24 day of November 2009.

  
Notary Public



[AFFIX NOTARY SEAL]