

Holl. Clifford Singer, LLP (Box 43)

STATE OF NORTH CAROLINA

COUNTY OF WAKE

DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS OF
SARATOGA ORCHARD PARK TOWNHOMES

THIS DECLARATION is made as of this 14th day of October, 1998, by
PULTE HOME CORPORATION, a Michigan corporation ("Declarant") and Saratoga
Development Corporation, a North Carolina corporation ("Property Owner").

STATEMENT OF PURPOSE

Declarant and Property Owner are the owners of those certain parcels of land which
are a part of the planned and exclusive residential community of single-family townhouse
homes to be known as Saratoga Orchard Park Townhomes located in the Town of Cary,
Wake County, North Carolina, which parcels are more particularly described on: (1) that
plat of survey prepared by Derward W. Baker & Associates, P.A., dated January 16,
1998, and recorded in Map Book 1998 at Page 330 in the Wake County Public Registry
and (2) on Exhibit A attached hereto and incorporated herein by reference.

It is in the best interest of Declarant and Property Owner, as well as to the benefit,
interest and advantage of each person or other entity later acquiring any property in
Saratoga Orchard Park Townhomes that certain covenants, conditions, easements,
assessments, liens and restrictions governing and regulating the use and occupancy of the
same be established, fixed and set forth and declared to be covenants running with the
land.

Declarant and Property Owner desire to provide for the preservation of the values
and the desirability and attractiveness of the real property in Saratoga Orchard Park
Townhomes and for the continued maintenance and operation of such common areas as
may be provided.

DECLARATION

In consideration of the premises and for the purposes stated, Declarant and Property
Owner hereby declare that all of the real property described on that plat of survey prepared
by Derward W. Baker & Associates, P.A., dated January 16, 1998, and recorded in Map
Book 1998 at Page 330 in the Wake County Public Registry shall be held, sold and
conveyed subject to the following easements, restrictions, covenants and conditions (all of

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which are collectively referred to in this instrument as "Restrictions"), which restrictions shall be construed as covenants running with the land and shall be binding on all parties having any right, title or interest in the described real property or any part thereof, and their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I: DEFINITIONS

The following words when used in this Declaration or any Supplemental Declaration (unless the context shall prohibit) shall have the following meanings:

(1.1) "Association" shall mean Saratoga Orchard Park Homeowners Association, Inc., a non-profit corporation organized and existing under the laws of the State of North Carolina and its successors and assigns.

(1.2) "Owner" shall mean the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of Saratoga Orchard Park Townhomes, excluding those having such interest merely as security for the performance of an obligation.

(1.3) "Property" shall mean that certain real property shown on that certain plat recorded in Map Book 1998 at Page 330 in the Wake County Public Registry together with any real property subsequently added by Declarant pursuant to the provisions of any Supplemental Declaration of Covenants, Conditions and Restrictions.

(1.4) "Common Area" shall mean all real property owned by the Association in Saratoga Orchard Park Townhomes for the common use and enjoyment of members of the Association lying within the boundaries of the Property and shall include those areas designated on any recorded subdivision plat of the Property as "Common Area" or "Common Open Space" or "COS" or "Residual", but shall not include all Lots as herein defined and public street shown thereon. "Common Area" shall also include all private streets, if any, shown on said plats as now recorded or shall hereafter be recorded in the Wake County Public Registry.

(1.5) "Lot" shall mean any numbered plot of land to be used for residential purposes shown upon any recorded subdivision plat of the Property subject to this Declaration.

(1.6) "Declarant" shall mean and refer to Pulte Home Corporation, a Michigan corporation, and its successors and assigns.

(1.7) "Person" shall mean a natural person, as well as a corporation, partnership, firm, association, trust or other legal entity. The use of the masculine pronoun shall

include the neuter and feminine, and the use of the singular shall include the plural where the context so requires.

(1.8) "Property Owner" shall mean and refer to Saratoga Development Corporation, a North Carolina corporation, and its successors and assigns.

(1.9) "Occupant" shall mean any person or persons in possession of a Lot, including Owners, the family members, lessees, guests and invitees of such person or persons, and family members, guests and invitees of such lessees.

(1.10) "Saratoga Orchard Park Townhomes " shall mean that certain residential townhome community to be known and identified as "Saratoga Orchard Park Townhomes" which is being developed on the Property in the Town of Cary, Wake County, North Carolina.

(1.11) "FHLMC and FNMA" shall mean and refer to the Federal Home Loan Mortgage Corporation and Federal National Mortgage Association, respectively. If any or all of these federal agencies shall hereafter cease to exist or perform the same or similar functions they now serve, references hereto to FHLMC or FNMA shall be deemed to mean and refer to such agency or agencies as may succeed to the duties and services now performed by either or both of these departments.

(1.12) "FHA and VA" shall mean and refer to the Federal housing Administration, U.S. Department of Housing and Urban Development, and the Veteran's Administration, respectively. If either or both of these federal agencies shall hereafter cease to exist or perform the same or similar functions they now serve, references hereto to FHA or VA shall be deemed to mean and refer to such agency or agencies as may succeed to the duties and services now performed by either or both of these departments.

ARTICLE II: PROPERTY SUBJECT TO THIS DECLARATION

The Property which is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration is located in the Town of Cary, Wake County, North Carolina, and is more particularly described on the plat of the Property duly recorded in Map Book 1998 at Page 330 in the Wake County Public Registry. Declarant, without the consent of the Owners or any Eligible Mortgage Holders, may from time to time prior to that date which is seven (7) years from the date of this Declaration add additional property to Saratoga Orchard Park Townhomes by filing a Supplemental Declaration of Covenants, Conditions and Restrictions describing the property to be added and referencing the provisions of this Declaration. All such additional property shall be within the property described on Exhibit A. Declarant shall be under no obligation to annex any additional property. Any additional property annexed under the scheme of this Declaration shall be

developed for single family residential townhomes with deeded lots. Any Supplemental Declaration filed by Declarant annexing additional property may contain such complementary additions and modifications to the terms of this Declaration as may be necessary or desirable to reflect the different character, if any, of the additional property being annexed and as are not inconsistent with the general scheme of this Declaration. Each Owner of a Lot in an annexed phase automatically shall be a member of the Association and each Owner's Lot shall be subject to assessment by the Association in accordance with the terms of this Declaration. The Association shall have all duties, responsibilities and powers set forth in this Declaration, the Articles and Bylaws with respect to any annexed real property. Except as may otherwise be expressly provided in this Declaration or any Supplemental Declaration, the Property, including any annexed real property, shall be managed and governed by the Association as an entirety. All Owners shall have ingress and egress to and from all the Common Area throughout the Property and any phase thereof and shall have use and enjoyment of all Common Area within the Property, provided that any such use shall be subject to the provisions of this Declaration, any Supplemental Declaration, the Bylaws and any rules and regulation promulgated by the Board of Directors.

ARTICLE III: PROPERTY RIGHTS

(3.1) Owner's Easements of Enjoyment. Every Owner shall have a nonexclusive right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot subject to the provisions of this Declaration, including but not limited to the following:

(a) The right of the Association to limit the use of the Common Area to Owners, their families and guests;

(b) The right of the Association to suspend the voting rights of an Owner or the right of an Owner to use any recreational facilities owned or leased by the Association for any period during which any assessment against his Lot remains unpaid, or for any infraction of the Association's published rules and regulations, if any;

(c) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Association members. No such dedication or transfer shall be effective unless the members entitled to at least two-thirds (2/3) of the votes appurtenant to Class A Lots and Class B Lots agree to such dedication or transfer and signify their agreement by a signed and recorded written document; provided that this paragraph shall not preclude the Association through its Board of Directors from granting easements for the installation and

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maintenance of electrical, telephone, cable television, water and sewerage utilities and drainage facilities upon, over, under and across the Common Area without the assent of the membership if such easements are requisite for the convenient use and enjoyment of the Property as determined in the sole judgment of the Board of Directors.

(3.2) Delegation and Use. The right and easement of enjoyment granted to every Owner in Section 3.1 of this Article may be exercised by members of an Owner's family and guests thereof. An Owner may delegate to his tenants who occupy the residence of the Owner within the Property his rights of enjoyment in and to the Common Area and such facilities thereon as may be provided, in accordance with the Association's Bylaws and rules and regulations, if any.

ARTICLE IV: MEMBERSHIP AND VOTING RIGHTS

(4.1) Membership. Every Owner of a Lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

(4.2) Voting and Voting Rights. The Association shall have two (2) classes of voting membership:

(a) Class A. Class A members shall be all Owners with the exception of Declarant and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.

(b) Class B. The Class B member shall be the Declarant and any successor of Declarant who takes title for the purpose of development and sale and who is designated as such in a recorded instrument executed by Declarant. The Class B member shall be entitled to three (3) votes for each Lot owned by Declarant (including any Lots annexed by Supplemental Declaration pursuant to Article II). The Class B membership shall cease and be converted to Class A membership on the happening of one of the following events, whichever first occurs:

- (i) When the total votes outstanding in the Class A membership equal or exceed the total votes outstanding the Class B membership, or
- (ii) seven (7) years from the date of this Declaration, or
- (iii) When in its discretion, the Declarant so determines.

From and after the happening of these events, whichever occurs earlier, the Class B member shall be deemed to be a Class A member entitled to one (1) vote for each Lot which it owns. Notwithstanding any other language or provision to the contrary in this Declaration, in the Articles of Incorporation or in the Bylaws of the Association, Declarant hereby retains the right to appoint or remove any person, whether or not an Owner, on the Board of Directors of the Association and any officer or officers of the Association until ninety (90) days after the first of the events to transpire outlined in (i), (ii) and/or (iii) above concerning the termination of the Class B Member status of Declarant. Upon the expiration of the period of the Declarant's right to appoint and remove directors and officers of the Association pursuant to the provisions of this Section, such rights shall automatically pass to the Owners, including Declarant if it then owns one or more of the Lots; and a special meeting of the Association shall be called for and held within ninety (90) days from the date of the expiration of Declarant's rights hereunder. At such special meeting, the Owners shall elect a new Board of Directors which shall take over the responsibilities of running the Association and Declarant shall deliver the books, accounts, and records, if any, which they have kept on behalf of the Association, as well as any agreements or contracts executed by or on behalf of Association which may still be in effect or operation. Each Owner by acceptance of a deed to or other conveyance of a Lot vests in Declarant such authority to appoint and remove directors and officers of the Association as provided in this Section.

(4.3) Suspension of Rights. During any period in which a member shall be in default in the payment of any annual, special or other periodic assessment levied by the Association, the voting rights and right to the use of any recreational facilities which the Association may provide may be suspended by the Board of Directors until such assessment is paid. In the event of violation by a member of any rules or regulations established by the Board of Directors, such member's voting and use rights may also be suspended by the Board after a hearing at which the general requirements of due process shall be observed. Such hearings shall only be held by the Board or a committee thereof after giving a member ten (10) days prior written notice specifying each alleged violation and setting the time, place and date of the hearing. Determination of the violation shall be made by a majority vote of the Board or the committee thereof.

ARTICLE V: COVENANT FOR MAINTENANCE ASSESSMENTS

(5.1) Purpose of Assessment. The assessments levied by the Association shall be used: (a) to provide funds for maintenance, upkeep, landscaping and beautification of the Common Area in Saratoga Orchard Park Townhomes and to meet the maintenance obligation of the Association set forth in Article VII hereof; (b) to provide services for the Association members to promote the health, safety and welfare of the residents of Saratoga Orchard Park Townhomes, and in particular for the acquisition, improvement and

maintenance of properties, services and facilities related to the use and enjoyment of the Common Area, including but not limited to the cost of repair, replacement and additions thereof; (c) to provide funds to maintain the insurance coverage set forth in Section 10.1 hereof; (d) for the payment of taxes assessed against the Common Area, the employment of attorneys, accountants and other professionals to represent the Association when necessary or useful, and the employment of security personnel, if approved by the Board of Directors; (e) the provision of any service which is not readily available from any governmental authority and which the Association shall decide to provide; (f) the payment of all costs, expenses and fees necessary for the operation, maintenance, repair and renovation of the water and sanitary sewer system servicing Saratoga Orchard Park Townhomes, including, without limitation, the payment of all fees, charges, and expenses payable to the Wake County Utility Department, or Town of Cary Utility Department or a private utility company in connection therewith; (g) to provide funds for the use, maintenance and replacement of all utilities and roads located upon the Property.

(5.2) Creation of the Lien and Personal Obligation of Assessments. Declarant and Property Owner, for each Lot owned within the Property, hereby covenants, and each Owner of any Lot by acceptance of a Deed therefor, whether or not it shall be so expressed in said Deed, is deemed to covenant and agree to pay to the Association:

(a) Annual assessments for the purposes specified in Section 5.1 in the amount herein set forth; and

(b) Special assessments for the purposes specified in Section 5.1 as may be approved by the members, to be established, and collected as herein provided.

The four lots owned by Property Owner shall not be subject to the above special assessments until thirty (30) days after the date of the initial Lot is conveyed to an Owner by Declarant.

In order to secure payment of the annual and special assessments herein provided, such charges as may be levied by the Association against any Lot, together with late charges (if any), interest, costs of collection and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment or charge is made. Each such assessment, together with late charges (if any), interest, costs of collection and reasonable attorney's fees shall also be the personal obligation of the person who is the Owner of such Lot at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to an Owner's successor in title unless expressly assumed by them, provided such assumption shall not relieve such Owner of such obligation if the same is not paid when due by the successor assuming it.

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In order to establish a working capital fund for the Association, each Owner shall pay to the Association, at the time of the initial closing of a Lot, a deposit of an amount equal to two (2) months assessments due on the Lot, as an initial contribution (not as a credit to future payments). The four (4) Lots presently owned by the Property Owner shall not be subject to the payment of this initial contribution to the working capital fund for the Association.

(5.3) Exempt Property. The assessments, charges and liens created under this Article shall not apply to the Common Area, nor shall they apply to any Lot the title to which is vested either in any first mortgagee subsequent to foreclosure or any state or federal governmental agency which acquires title by reason of such agency's guarantee or insurance of a foreclosed mortgage loan; provided, however, that upon the resale of such Lot by such first mortgagee or such governmental agency the assessment herein provided shall again commence and accrue and shall be fully applicable to such Lot upon the conveyance to any subsequent Owner. Any Lot which Declarant may hereafter designate for common use as part of the Common Area shall also be exempt and all property conveyed to a local public authority, and all land granted to or used by a utility company shall be exempt from the assessments created herein.

(5.4) Maximum Annual Assessments. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall not exceed Twelve Hundred and No/100 Dollars (\$1200.00) on each Lot designated as a Lot on which a single-family townhome is or may be constructed, payable in monthly installments on or before the first day of each month.

(a) From and after January 1, of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased each year not more than ten percent (10%) above the maximum assessment for the previous year without a vote of the membership.

(b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased above ten percent (10%) by a vote of two-thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose.

(c) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum herein provided.

(d) Assessments payable by Declarant for unsold, unoccupied Lots shall be set at a level which is one-half (1/2) of the amount payable by other Lot Owners.

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(c) Beginning on the recording date of this Declaration and continuing for a one year period, the annual assessment for each of the four lots owned by Property Owner shall be \$300.00 per year, payable in monthly installments of \$25.00 per month. After this one year period, the four lots owned by Property Owner shall be subject to the same annual assessments required of the other Lots.

(5.5) Special Assessments. In addition to the annual assessment authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of the Association members who are voting in person or by proxy at a meeting duly called for this purpose.

(5.6) Notice and Quorum for Any Action Authorized Under Sections 5.4 and 5.5. Written notice of any meeting called for the purpose of taking any action authorized under Sections 5.4 and 5.5 of this Article shall be sent to all members not less than ten (10) days nor more than fifty (50) days in advance of the meeting. At the first such meeting called, the presence in person or by proxy of members entitled to cast one fourth (1/4) of all the votes of each class shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than six (6) months following the preceding meeting.

(5.7) Date of Commencement of Annual Assessments; Due Dates; Certificate of Payment. The annual assessments provided for herein shall commence as to all Lots shown on a recorded plat at the discretion of the Board, but not later than the first day of the sixth (6th) month following the conveyance of the first Lot contained on that plat to an Owner. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year when filed. At least thirty (30) days before January 1 of each year, the Board of Directors shall fix the amount of the annual assessment against each Lot and in the event the Board elects not to fix such assessment rate as herein provided, the amount of the prior year's annual assessment shall be the fixed amount. Written notice of any change in assessment rate shall be sent to every Owner. The annual assessments shall be collected on a monthly basis and the due dates for the payment of annual and special assessments shall be established by the Board of Directors. The Association shall, upon demand and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid to date.

(5.8) Effect of Non-Payment of Assessments; Remedies of the Association. Any assessment which are not paid when due are delinquent. Any assessment delinquent for a period of more than ten (10) days shall incur a late charge in an amount the Board may

from time to time determine. The Association shall give a notice of delinquency to any member who has not paid within ten (10) days following the due date. If the assessment is not paid within thirty (30) days of the due date, a lien, as provided in this Article, shall attach and shall include the late charge, interest on the principal amount due (not to exceed the maximum legal rate), and all late charges from the date first due, all costs of collection, any fines assessed as hereinafter provided, reasonable attorney's fees actually incurred, and any other amounts provided or permitted by law. If the assessment remains unpaid after sixty (60) days from the due date, the Association may, as determined by the Board, institute suit to collect the amounts due and to foreclose the lien. Each Owner, by acceptance of a deed or as a party to any other type of conveyance, vests in the Association or its agents the right and power to bring all actions against him or her personally for the collection of the charges as a debt or to foreclose the lien in the same manner as other liens for the improvement of real property may be foreclosed. The lien provided for in this Article shall be in favor of the Association and shall be for the benefit of all other Owners.

The Association shall have the right after notice and hearing, to levy fines for infractions of the provisions of this Declaration or rules and regulations promulgated by the Board provided that the Owner shall have been warned in writing of a previous infraction within the preceding one (1) year and the fine conforms to the rates hereinafter provided. Late charges on delinquent assessments and fines levied by the Association shall not exceed the following rates computed on the outstanding balance, which shall include any late charges previously assessed and unpaid, from month to month:

- (a) on so much of the outstanding balance as does not exceed One Thousand Dollars (\$1,000.00), one and one-half percent (1.50%);
- (b) if the outstanding balance is more than One Thousand Dollars (\$1,000.00), one percent (1.0%) on the excess over One Thousand Dollars (\$1,000.00) of the outstanding balance;
- (c) if the late charge so computed is less than Ten Dollars (\$10.00) for any month, then Ten Dollars (\$10.00).

No charge may be imposed more than once for the delinquency of the same payment, provided, however, that the imposition of a late charge on any delinquent payment shall not eliminate or supersede charges imposed on prior delinquent payments. When an assessment is paid more than fifteen (15) days after the due date of the assessment, late charges shall accrue from the first day following the due date of the assessment. All late charges shall be non-cumulative. The Association may bring legal action against the Owner personally obligated to pay a delinquent assessment or fine and the Association may suspend the delinquent Owner's membership rights in the Association while the assessment or fine remains unpaid. In any legal action to enforce payment of an

assessment or fine, the Association shall be entitled to recover interest, costs and reasonable attorney's fees.

No Owner may waive or otherwise exempt himself or herself from liability for the assessments provided for herein, including, by way of illustration, but not limitation, by non-use of Common Areas, or abandonment of the Lot. No diminution or abatement of assessment or set-off shall be claimed or allowed by reason of any alleged failure of the Association or Board to take some action or perform some function required to be taken or performed by the Association or Board under this Declaration or the Bylaws, or for improvements which are the responsibility of the Association, or from any action taken to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority, the obligation to pay assessments being a separate and independent covenant on the part of each Owner.

All payments shall be applied first to costs and attorney's fees, then to fines, then to late charges, then to interest, then to delinquent assessments, then to any unpaid installments of the annual assessment or special assessments which are not subject matter of suit, in the order of their coming due, and then to any unpaid installments of the annual assessment or special assessments which are the subject matter of suit, in the order of their coming due.

(5.9) Subordination of the Lien to First Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first priority deed of trust or first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot which is subject to any first mortgage pursuant to a foreclosure thereof shall extinguish the lien of such assessment as to payments which became due prior to such sale or transfer, foreclosure or of sale junior only to the said foreclosed first deed of trust or mortgage but senior to the equity of redemption of the mortgagor or trustor. No sale or transfer shall relieve such Lot from liability for any assessment thereafter becoming due or from the lien thereof.

(5.10) Collection Upon Sale by Declarant. Upon the sale of a Lot by Declarant, the purchaser shall pay to the Association at the closing of the sale that amount of money that is equal to that portion of the annual assessment attributable to the balance of the month in which the closing takes place and the initial contribution to the Association's working capital fund. Any special assessment made before, but falling due after, the date of closing of the sale of a Lot by Declarant shall be paid in full to the Association by the purchaser at the closing of the sale.

ARTICLE VI: ARCHITECTURAL AND USE RESTRICTIONS

(6.1) Architectural Control Committee. Before all Class B Lots shall cease to exist and be converted to Class A Lots pursuant to Article IV, Declarant shall appoint an Architectural Control Committee consisting of not less than three nor more than five members to serve as representatives of the Association's Board of Directors and enforce the restrictions hereafter set forth. Members of the Board of Directors may serve on the Committee.

Prior to the formation of said Committee, Declarant shall have the responsibility of enforcing the restrictions set forth in this Article. Upon the termination of the Class B membership, the Architectural Control Committee shall be appointed by the Board of Directors. Reference herein to the Committee shall mean the Declarant until such Committee is appointed. The following architectural, maintenance and use restrictions shall apply to each and every Lot now or hereafter subject to this Declaration, with the exception of Paragraphs 6.2, 6.8, 6.9, 6.10 and 6.11 which shall not be deemed to apply to Declarant until Declarant has sold and conveyed all Lots on the Property.

There are completed dwellings on the four lots owned by Property Owner. The Property Owner or future Owners of these four lots shall not be required to make any alteration or modification of a dwelling's existing paint color, roofing, architectural style or any other existing exterior feature by the Architectural Control Committee. If the Property Owner or future Owners of these four lots desires to alter or modify the existing paint color, roofing, architectural style or any other existing exterior feature of a dwelling on the four lots, then these changes must be approved by the Architectural Control Committee as provided in the following paragraphs.

(6.2) Approval of Plans and Architectural Committee. After the initial construction of the dwelling on a Lot has been completed, no construction, reconstruction, remodeling, alteration, painting, roofing or addition to any structure, building, fence, wall, drive or walkway, or portion of same, shall be commenced or maintained upon any Lot, nor shall any exterior addition to or change or alteration therein be made after completion of construction of said dwelling, unless and until the plans and specifications showing the nature, kind, shape, height, material and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Committee. If the Committee fails to approve or disapprove such design and location within sixty (60) days after said plans and specifications shall have been submitted to them, further approval will not be required and this Article will be deemed to have been fully complied with. Any disapproval must be in writing and give complete reasons for any such disapproval, with suggestions for bringing the plans and specifications into compliance. Upon giving approval to such plans and specifications, construction shall be started and prosecuted to completion promptly and in strict conformity with such plans as have been previously approved by the Committee.

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The Committee or the Board of Directors of the Association or any aggrieved Lot Owner shall be entitled to stop any construction in violation of these restrictions.

(6.3) Residential Use. All Lots shall be used for residential purposes only, and no trade or business may be conducted in or from any Lot, except that an Owner or Occupant residing on a Lot may conduct business activities within the improvements on the Lot so long as: (a) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Lot; (b) the business activity conforms to all zoning requirements for the Property; (c) the business activity does not involve persons coming onto the Property who do not reside in the Property or door-to-door solicitation of residents of the Property; and (d) the business activity is consistent with the residential character of the Property and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Property, as may be determined in the sole discretion of the Board.

The term "business" and "trade", as used in this provision, shall be construed to have their ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (i) such activity is engaged in full or part-time; (ii) such activity is intended to or does generate a profit; or (iii) a license is required therefor. Notwithstanding the above, the leasing of a Lot shall not be considered a trade or business within the meaning of this section. This section shall not apply to any activity conducted by the Declarant with respect to its development and sale of the Property or its use of any Lots which it owns within the Property.

Any leases of improvements on any Lot shall be in writing and shall be for a period of not less than six (6) months.

(6.4) Building Requirements. Minimum setback lines which may be shown on any recorded plat of the Property are not necessarily intended to create uniformity of setbacks; they are meant primarily to avoid overcrowding and monotony. It is intended that setbacks may be staggered where appropriate so as to preserve the trees and other natural vegetation and to insure each Owner the greatest benefit and enjoyment of the Common Area. Declarant or the Committee reserves the right to select the precise site location of each structure on each Lot and to arrange the same in such manner and for such reasons as the Declarant and the Committee, as the case may be, deems sufficient, provided, however, such determination shall be consistent with the provisions set forth herein. Any building or structure or any part thereof located on any Lot may abut upon and be incorporated into any party wall, and there shall be no sideline setback requirement as to Lot sidelines upon which party walls are constructed. Any deviation from the building line requirements not

in excess of ten percent (10%) thereof shall not be construed as a violation of said building line requirements.

No dwelling shall be erected or placed on any Lot having a heated living area (exclusive of uncovered porches, stoops, terraces, attached garages or carports) of less than 800 square feet, and any dwelling shall abut, or be built so as to abut, any dwelling on any adjoining lot as in the same manner as originally constructed by Declarant.

(6.5) Walls, Fences and Hedges. No fence, hedge or wall of any type or kind shall be erected or maintained on a Lot except such fences, hedges or walls as may be installed, constructed or erected with the initial construction of the main dwelling located on said Lot, or as may later be approved by the Committee.

(6.6) Use of Outbuildings and Similar Structures. No structure of a temporary nature shall be erected or allowed to remain on any Lot, and no trailer, recreational vehicle, boat, shed, tent, garage, carport, or any other structure of a similar nature shall be used as a residence either temporarily or permanently. Provided, however, this section shall not be construed to prevent Declarant from using sheds or other temporary structures during construction for such purposes as Declarant deems necessary.

(6.7) Animals and Pets. No animals, livestock or poultry of any kind shall be raised, bred, pastured, or maintained on any Lot, except household pets which may be kept thereon in reasonable numbers (as established by rules and regulations promulgated by the Board of Directors) as pets for the sole pleasure and use of the Occupants, but not for any commercial use or purpose. Birds shall be confined in cages. No animal shall be allowed on a Lot if such animal constitutes an unreasonable annoyance, inconvenience or nuisance to any other Owner. If the Board receives any complaint that an animal constitutes an unreasonable annoyance, inconvenience or nuisance, the Board shall inform the Owner of such animal notice and an opportunity for hearing, and if the Board finds that such animal constitutes an unreasonable annoyance, inconvenience or nuisance, the Board may require that such animal be removed from the Property. The Board may adopt rules and regulations concerning animals which are more restrictive than the provisions of this Declaration, including rules requiring that all animals be kept on a leash when in the Common Area, that animals be restricted to designated areas within the Common Area and that Owners are responsible for cleaning up any mess that an animal creates within the Common Area. The Board may adopt a rule prohibiting certain pets, which is more restrictive than the provisions of this Declaration, except that such rules shall not apply to animals residing in the Property at the time such rule is adopted. In any event, the Board at any time may require that any animal found to be an unreasonable annoyance, inconvenience or nuisance be removed as provided in this paragraph.

(6.8) Signs. No advertising signs of any type or kind shall be erected, placed or permitted to remain upon or above any Lot with the exception of a single sign "For Rent" or "For Sale," which sign shall not exceed two feet by three feet in dimension and shall refer only to the premises on which displayed, there being only one sign to a Lot.

The foregoing provisions of this Section or any other provision of this Declaration or the Bylaws notwithstanding, Declarant shall have an easement to maintain sales offices and models for sales of Lots on the Property. Declarant shall have the right to relocate, from time to time, and to discontinue and reestablish, from time to time, within Saratoga Orchard Park Townhomes, until all of the Lots have been conveyed to an Owner other than Declarant, any one or more of such offices or models. Declarant also shall have the right to change the use or combination of uses of such offices or models, provided that such offices or models shall be used only for sales offices or models.

Furthermore, Declarant shall also have an easement to maintain signs on the Common Area advertising Saratoga Orchard Park Townhomes until all of the Lots have been conveyed to Owners other than Declarant. Declarant shall remove all such signs not later than thirty (30) days after all of the Lots have been conveyed to Owners other than Declarant and shall repair or pay for the repair of all damage done by removal of such signs.

(6.9) Nuisances. No offensive or illegal activity shall be carried on or upon any Lot, nor shall anything be done thereof which is or may become an annoyance or nuisance to any other Owner. No Lot shall be used in whole or in part for storage or rubbish of any character whatsoever, nor for the storage of any property or thing that will cause such Lot to appear in any unclean or untidy condition or that is unsightly; nor shall any substance, thing or material be kept upon any Lot that will emit a foul odor or that will cause any noise that will or might disturb the peace and quiet of the occupants of surrounding Lots. No trash, rubbish, stored materials, commercial vehicles, recreational vehicles, trailers, campers, boats, motorcycles, truck (of any kind), vans (other than passenger minivans), wrecked or inoperable vehicles or similar unsightly items shall be allowed to remain on any Lot outside an enclosed garage. Furthermore, no such unsightly item shall be allowed to remain stored or parked within the right of way of any street within Saratoga Orchard Park Townhomes. However, the foregoing shall not be construed to prohibit temporary deposits of trash, rubbish and other such debris for pick up by governmental and other similar garbage and trash removal service units. In the event any Owner fails or refuses to keep his Lot free from unsightly objects, vehicles, weeds or underbrush in a manner satisfactory to a majority of the Association Board of Directors, the Association may, through its agent or representative, five days after posting a notice on such Lot or mailing a notice to the Owner thereof at his property requesting the Owner to comply with the requirements of this paragraph, enter and remove all such unsightly objects, vehicle debris

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or other vegetation at Owner's expense and Owner, by acquiring any Lot subject to this Declaration, agrees to pay such costs incurred by the Association in the enforcement of this section promptly upon demand. No such entry as provided herein shall be deemed a trespass.

(6.10) Clotheslines, Garbage Cans, Etc. All garbage cans, lawnmowers and similar equipment shall be kept, in an enclosed structure or screened by adequate planting or fencing so as to conceal same from the view of neighboring Owners and streets. Incinerators for garbage, trash or other refuse shall not be used nor permitted to be erected or placed on any Lot. No clotheslines shall be erected or maintained on any Lot.

(6.11) Aerials, Antennas and Satellite Dishes. No radio or television or other aerial, antenna, tower or other transmitting or receiving structure or support thereof of whatever size, shall be erected, installed, placed or maintained on a Lot unless so erected, installed, placed or maintained entirely out of sight within the enclosed portion of the individual townhouse on the Lot. No television satellite dishes shall be erected on any Lot, except that a television satellite dish not exceeding 18 inches in diameter which is attached to the dwelling on the Lot and is not visible from the street or parking area in front of the lot shall be permitted.

(6.12) Use of Common Areas. No planting or gardening by individual Owners shall be done upon the Common Area. Except for the right of easement of enjoyment in and to the Common Area herein given to each Owner, Lot Owners are hereby prohibited and restricted from using any of the Common Area outside of their respective Lot except as may be allowed and prescribed by the Association Board of Directors or as expressly provided for herein. It is Declarant's intent that this section inure to the mutual benefit of all Owners within the Property. Notwithstanding the foregoing, Declarant shall be entitled to use the Common Area for storage of equipment, machinery, materials, on-site construction or sales offices until all Lots on the Property have been sold and conveyed.

ARTICLE VII: MAINTENANCE

(7.1) Association's Responsibility. The Association shall maintain and keep in good repair the Common Area. This maintenance shall include, without limitation, maintenance, repair, and replacement, subject to any insurance then in effect, of all landscaping and grass areas, paving and other improvements situated on the Common Area. The Association shall maintain and keep in good repair all landscaping and grass areas within the boundaries of Lots, except each Owner of a Lot which has a courtyard or private patio area shall be responsible for the maintenance of the landscaping and grass areas within the boundaries of the courtyard or private patio area. The Association shall maintain and keep in good repair all paved or concrete walkways, driveways and parking areas, water, sewer, gas and electricity lines, even though located partially or wholly

within the boundaries of a Lot. The Association shall maintain and keep in good repair all sewer pipes or facilities which serve more than one (1) Lot, whether located within or without a Lot's boundaries.

(7.2) Owner's Responsibility. Except as provided in Section 7.1 above, all maintenance and repair of the improvements on the Lot shall be the responsibility of the Owner thereof. This shall include, but is not limited to, providing exterior maintenance upon Lot improvements as follows: paint, stain, repair, replace, and care for roof surfaces and roof systems, gutters, downspouts, chimneys, and, with the exception of entry doors, glass and their appurtenant hardware and all exterior building surfaces. The type or style of entry doors, glass and their appurtenant hardware shall not be replaced or changed by a Lot Owner without express written permission of the Association. In the event that the Board of Directors of the Association determines that (a) any Owner has failed or refused to discharge properly his obligations with regard to the maintenance, repair, or replacement of items for which he is responsible hereunder; or (b) that the need for maintenance, repair, or replacement, which is the responsibility of the Association hereunder, is caused through the willful or negligent act of an Owner, his or her family, guests, lessees, or invitees, and is not covered or paid for by insurance, in whole or in part, then, the Association may perform the repair, replacement or maintenance and shall, except in the event of an emergency situation, give the Owner written notice of the Association's intent to provide such necessary maintenance, repair, or replacement, at the Owner's sole cost and expense. The notice shall set forth with reasonable particularity the maintenance, repairs, or replacement deemed necessary. The Owner shall have ten (10) days within which to complete such maintenance, repair, or replacement, or, in the event that such maintenance, repair, or replacement is not capable of completion within a ten (10) day period, to commence such work which shall be completed within a reasonable time. If any Owner does not comply with the provisions hereof, the Association may provide any such maintenance, repair, or replacement at Owner's sole cost and expense, and all costs shall be added to and become a part of the assessment to which such Owner is subject and shall become a lien against the Lot.

(7.3) Management Agreement. The Association shall have the right to hire a management company to undertake any of its responsibilities set forth in the Declaration. However, any such management agreement shall be terminable by the Association, without liability, upon not more than 90 days notice to the other party.

ARTICLE VIII: EASEMENTS

(8.1) General. Each Lot now or hereafter subjected to this Declaration shall be subject to all easements shown or set forth on the recorded plat or plats of survey upon which such Lot is shown or set forth in Section 3.1 hereof or on record in the Wake County Public Registry. No structure of any type shall be erected or placed upon any part

of the Lot or Common Area which will interfere with rights and use of any and all said easements.

(8.2) Utility and Drainage. An easement on each Lot is hereby reserved by Declarant for itself, its successors and assigns, and the Association along, over, under and upon a strip of land five (5) feet in width parallel and contiguous to the rear or back Lot line of each Lot, in addition to such other easements as may appear on any recorded subdivision plat. The purpose of these easements shall be to provide, install, maintain, construct and operate water lines, telephone and electric power lines, cable television lines, sanitary sewer and storm drainage facilities, drainage ditches and such other utility installations necessary to serve any portion of Saratoga Orchard Park Townhomes. Each Owner, by his or her acceptance of a deed to a Lot, and the Association, by its acceptance of a deed to the Common Area, acknowledges such reservation and the right of Declarant to transfer such easements and the maintenance, repair and replacement obligations associated with such utilities to the Association or to such utility companies as Declarant may choose. The easements reserved by the Declarant include the right of ingress, egress and regress to and from such facility and installations for construction, installation and maintenance thereof, the right to cut any trees, bushes, or shrubbery, make any gradings of the soil, or take any similar action reasonably necessary to provide economical utility installation and to maintain the overall appearance of Saratoga Orchard Park Townhomes. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation or maintenance of utilities, or which may change the direction or flow of drainage channels in the easements except for walls located on a portion of the side line or lines of a Lot. The easement area of each and all improvements in it shall be maintained continuously by either the Owner or the Association as per Article VII, except for those improvements for which a public authority or utility company is responsible. After five (5) days prior written notice to Owner, Declarant may exercise the right to remove obstructions in such easements upon Owner's failure to do so. For the purpose of this covenant, Declarant reserves the right to modify or extinguish the herein reserved easements along any Lot lines when in its sole discretion adequate reserved easements are otherwise available for the installation of drainage facilities and/or utility service lines. For the duration of these restrictions, no such utilities shall be permitted to occupy or otherwise encroach upon any of the easement areas reserved without first obtaining the prior written consent of Declarant; provided, however, local service from utilities within easement areas to residences constructed upon any such Lots may be established without first obtaining separate consents therefor from Declarant. The Association may likewise reserve and grant easements for the installation and maintenance of water, sewerage, utility and drainage facilities in, across, under and over the Common Area. The rights and easements of Declarant under this Section shall extend to Declarant's successors and assigns and the Association.

(8.3) Common Utility and Conduit Easement. All pipes, wires, conduits, water supply and sewer lines, public utility lines (electricity, telephone and gas) and cable television lines located within a residence on a Lot and serving only such residence shall be owned, maintained, repaired and replaced by the Owner of such residence. Every Owner shall have an easement in common with the Owners of other residences on Lots to maintain and use all pipes, wires, conduits, water supply and sewer lines, public utility lines and cable television lines located within other residences on Lots and servicing such Owner's residence. Each residence on a Lot shall be subject to an easement in favor of the Owners of other residences on Lots to maintain and use the pipes, wires, conduits, water supply, sewer systems and public utility lines and cable television lines.

The Association shall have the right of access to each residence on a Lot for the maintenance, repair, or replacement of any pipes, wires, conduits, water supply, sewer systems, public utility lines or cable television lines located in any residence on a Lot which also serves one or more other residences on other Lots. Such right shall be exercised at a reasonable time upon reasonable notice to the Owner and/or Occupant, provided, however, that in an emergency such right may be exercised at any time and without notice. The cost of such repair, maintenance or replacement shall be a common expense which shall be the responsibility of the Association, except that, if such repair, maintenance or replacement is occasioned by a negligent or willful act or omission of a Owner and/or Occupant, it shall be considered a special expense allocable to the responsible Owner(s) and such cost shall be added to the assessment of such Owner(s) and, as part of that assessment, shall constitute a lien on the Owner(s)' Lot to secure the payment thereof.

The Association shall have an easement over the exteriors of all residences on the Lots for the placement, maintenance, repair and replacement of utility banks, meters and telephone pedestals.

(8.4) Construction. Declarant hereby reserves for itself, its successors and assigns and the Association, a construction easement over the Property for the purposes reasonably related to installation of streets and utilities and construction of dwellings on the Lots.

(8.5) Emergency. There is hereby reserved without further assent or permit and to the extent allowed by law, a general easement to all firemen, ambulance personnel, policemen and security guards employed by Declarant and all similar persons to enter upon the properties or any portion thereof which is now or hereafter made subject to this Declaration in the performance of their respective duties. The Association and its agents shall also have the right to enter the Lots and any improvements located thereon for the purpose of making any emergency repairs or replacements.

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(8.6) Ingress and Egress. Declarant reserves an easement for pedestrian and vehicular ingress and egress over the roads and sidewalks within the Property for the Declarant, its successors and assigns, with such easement to benefit all Property which is retained by Declarant, its successors and assigns.

(8.7) Streets. To the extent that portions of the streets encroach on any Lot, an easement for such encroachment shall exist together with an easement for any Lot Owner, or its guests and invitees for ingress and egress over said street within such Lot. No on-street parking shall be allowed at any time on any street in Saratoga Orchard Park Townhomes without the prior written permission of the Association.

ARTICLE IX: PARTY WALLS

(9.1) Declaration. Each wall which is built as a part of the original construction of the improvements made on the Lots and which is placed on the dividing line between any two (2) Lots shall be deemed a party wall for the benefit of the Owner of said Lots and shall be used for the joint purpose of the dwellings separated thereby.

(9.2) Ownership and Maintenance. Without specific reference in the deed of conveyance of a Lot, conveyance of each Lot separated by any other Lot by a party wall shall be deemed to include an undivided interest in so much of the width of the entire length of said party wall separating such Lot from the adjoining Lot as is located on said Lot, together with a grant of easement of lateral support for such part of said wall as is situated on the adjoining Lot; and there shall be deemed reserved in the conveyance of each of such Lots a like easement of lateral support. The cost of reasonable repair and maintenance of the party wall shall be shared by the Owners who make use of the wall in proportion to such use. Whenever a party wall or any part thereof shall be rebuilt, it shall be constructed on the same site and shall be of the same size and of the same or similar materials of like quality as the party wall prior to such repair or reconstruction.

(9.3) Applicable Law. The laws and precedents of the State of North Carolina in regard to party walls, and of liability for property damage due to negligence or willful acts or omissions shall apply hereto.

ARTICLE X: INSURANCE AND CASUALTY LOSSES

(10.1) Insurance.

(a) Common Area. It shall be the duty of the Association to obtain and maintain in effect at all times:

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- (i) a policy of casualty insurance on all improvements located on the property; and
- (ii) a comprehensive policy of public liability insurance.

Each such insurance policy shall have such limits of coverage, and provide for such deductibles, as shall be determined by the Board of Directors. During the existence of the Class B membership of the Association, such insurances may be provided by a self-insurance program maintained by the Declarant.

(b) Lots. The owner of each Lot shall obtain and maintain in effect at all times a master multi-peril policy of property insurance covering all insurable portions of such Lot, on a replacement cost basis in an amount of not less than on hundred percent (100%) of the insurable value, based upon replacement costs, of the same.

(10.2) Damage and Destruction.

(a) Common Area. All damage that shall occur to any improvements located on any Common Area on account of any casualty shall be repaired in all events. Such repairs shall be undertaken and completed as soon after the occurrence of any such casualty as is reasonably practicable. All repairs to any improvements located on the Common Area shall be made in accordance with plans and specifications that shall be approved for the same by the Board of Directors of the Association.

(b) Lots. In the event of the occurrence of any damage or destruction by fire or other casualty to any one or more Lot improvements, such damage or destruction shall be repaired or rebuilt in all events. All repair, reconstruction or rebuilding of any improvements on Lots shall be substantially in accordance with the plans and specifications for such damaged or destroyed Lot improvement prior to the occurrence of such damage, or in accordance with such differing plans and specifications as are approved for such purpose by both the owner of the Lot improvement which is to be so repaired, reconstructed or rebuilt, and by the Board of Directors. The work of repairing, reconstructing or rebuilding any damaged or destroyed Lot improvement shall be completed as soon after the occurrence of such damage or destruction as is reasonably practicable at no cost or expense to the Association. The owner of any Lot improvement which is to be repaired, reconstructed or rebuilt pursuant to the provisions of this paragraph shall be responsible for the completion of such work in the manner, and within the time requirements, set forth in this paragraph.

ARTICLE XI: MORTGAGEE RIGHTS

The following provisions are for the benefit of holders, insurers, or guarantors of first mortgages on Lots in the Property. The provisions of this Article apply to both this Declaration and to the Bylaws of the Association, notwithstanding any other provisions contained in this Declaration or the Bylaws; provided, however, voting percentages set forth in this Article are subject to and are controlled by higher percentage requirements, if any, set forth in this Declaration or the Bylaws for specific actions. Where indicated, these provisions apply only to Eligible Mortgage Holders, as defined in this Article.

(11.1) Notices of Action. An institutional holder, insurer, or guarantor of a first mortgage, who provides written request to the Association (the request to state the name and address of the holder, insurer, or guarantor and the Unit address), (the holder, insurer, or guarantor then becoming an Eligible Mortgage Holder), will be entitled to request a copy of the Association's immediately preceding year's financial statement, and will be entitled to timely written notice of:

- (a) any proposed termination of the Association;
- (b) any condemnation loss or any casualty loss which affects a material portion of the Properties or which affects any Lot on which there is a first mortgage held, insured, or guaranteed by the Eligible Mortgage Holder;
- (c) any delinquency in the payment of assessments or charges owed by an Owner of a Lot subject to the mortgage of the Eligible Mortgage Holder, where such delinquency has continued for a period of sixty (60) days or any default in the performance by the Owner of any obligation under the Declaration or Bylaws which is not cured within sixty (60) days;
- (d) any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association; or
- (e) any proposed action which would require the consent of Eligible Mortgage Holders, as required in Sections 11.2 and 11.3 of this Article.

(11.2) Other Provisions for First Lien Holders. To the extent possible under North Carolina law:

- (a) Any restoration or repair of the Property after partial condemnation or damage due to an insurable hazard shall be substantially in accordance with this Declaration and the original plans and specifications, unless Eligible Mortgage Holders of first mortgages on Lots to which are allocated at least fifty-one (51%)

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percent of the votes of Lots subject to mortgages held by such Eligible Mortgage Holders approve of other plans for the repair and restoration of the Property.

(b) Any election to terminate the Association after substantial destruction or a substantial taking in condemnation must be approved by the Eligible Mortgage Holders of first mortgages on Lots to which are allocated at least fifty-one percent (51%) of the votes of Lots subject to mortgages held by such Eligible Mortgage Holders.

(11.3) Amendments to Documents. The following provisions do not apply to amendments to the constituent documents or termination of the Association made as a result of destruction, damage, or condemnation pursuant to Subsection 11.2(a) and 11.2(b) in this Article, or the addition of land in accordance with Article II. So long as required by the Federal National Mortgage Association (FNMA) and/or the Federal Home Loan Mortgage Corporation (FHLMC), the following shall apply:

(a) The consent of at least sixty-seven percent (67%) of the Class A votes and of the Declarant, so long as Declarant owns any land subject to this Declaration, and the approval of the Eligible Mortgage Holders of first mortgages on Lots to which at least sixty-seven percent (67%) of the votes of Units subject to a mortgage appertain, shall be required to terminate the Association.

(b) The consent of at least sixty-seven percent (67%) of the Class A votes and of the Declarant, so long as Declarant owns any land subject to this Declaration, and the approval of Eligible Mortgage Holders of first mortgages on Lots to which at least fifty-one percent (51%) of the votes of Lots subject to a mortgage appertain, shall be required to materially amend any provision of the Declaration, Bylaws, or Articles of Incorporation of the Association, or to add any material provision to the above documents, which establish, provide for, govern, or regulate any of the following:

- (i) voting;
- (ii) assessments, assessment liens, or subordination of liens;
- (iii) reserves for maintenance, repair, and replacement of the Common Area;
- (iv) insurance or fidelity bonds;
- (v) rights to use of the Common Area;

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- (vi) responsibility for maintenance and repair of the Property;
- (vii) withdrawal of Property from the Association;
- (viii) boundaries of any Lot;
- (ix) leasing of Lots;
- (x) imposition of any right of first refusal or similar restriction of the right of any Owner to sell, transfer, or otherwise convey his or her Lot;
- (xi) establishment of self-management by the Association when professional management has been required by an Eligible Mortgage Holder; or
- (xii) any provision in the Declaration, Bylaws, or Articles of Incorporation which are for the express benefit of holders, guarantors, or insurers of first mortgages on Lots.

(11.4) Special FHLMC Provision. So long as required by the Federal Home Loan Mortgage Corporation, the following provisions apply in addition to and not in lieu of the foregoing three Sections of this Article. Unless two-thirds (2/3) of the first mortgagees or Owners give their consent the Association shall not:

- (a) by act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer the Common Area which the Association owns, directly or indirectly (the granting of easements for public utilities or for other public purposes consistent with the intended use of the Property shall not be deemed a transfer);
- (b) change the method of determining the obligations, assessments, dues, or other charges which may be levied against an Owner;
- (c) by act or omission change, waive, or abandon any scheme of regulations or enforcement thereof pertaining to the architectural design or the exterior appearance and maintenance of Lots and of the Common Area;
- (d) fail to maintain fire and extended coverage insurance, as required by this Declaration; or
- (e) use hazard insurance proceeds for any Common Area losses for other than the repair, replacement, or reconstruction of such Property.

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The provisions of this Section 11.4 shall not be construed to reduce the percentage vote that must be obtained from mortgagees or Owners where a larger percentage votes is otherwise required for any of the actions contained in this Section.

First mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Common Area and may pay overdue premiums on casualty insurance policies, or secure new casualty insurance coverage upon the lapse of a policy, for the Common Area, and first mortgagees making such payments shall be entitled to immediate reimbursement from the Association.

(11.5) Notice to Association. Upon request, each Lot Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Lot.

(11.6) Amendments by Board. Should the Federal National Mortgage Association (FNMA) or the Federal Home Loan Mortgage Corporation (FHLMC) subsequently delete any of their respective requirements which necessitate the provisions of this Article or make any such requirements less stringent, the Board, without approval of the Owners, may cause an amendment to this Article to be recorded to reflect such change.

(11.7) Applicability of Article XI. Nothing contained in this Article shall be construed to reduce the percentage vote that must otherwise be obtained under the Declaration, Bylaws, or North Carolina law for any of the acts set out in this Article.

(11.8) Failure of Mortgagee to Respond. Any Mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within thirty (30) days of the date of the Association's request.

(11.9) Veterans Administration or HUD Approval. As long as there is a Class B membership, the following actions shall require the prior approval of the Veterans Administration or HUD so long as the Veterans Administration or HUD is guaranteeing any mortgage in Saratoga Orchard Park Townhomes: annexation of additional property to the Declaration, except for annexation by Declarant pursuant to a plan of annexation previously approved by the Veterans Administration or HUD; dedication of Commons Area to any public entity; and material amendment of the Declaration, Bylaws, or Articles of Incorporation.

ARTICLE XII: ROADS AND PARKING

(12.1) **Roads.** In the event any roads designated on recorded plats of any portion of Saratoga Orchard Park Townhomes which are dedicated by Declarant for public use are not subsequently accepted by the appropriate governmental authorities for maintenance, Declarant reserves the right to convey by deed to the Association title to that portion of the Property comprising such roads, and each Owner, by his or her acceptance of a deed to a Lot, and the Association, by its acceptance of the deed to the Common Area, acknowledges such reservation and the right of Declarant to transfer title to such portion of the Property comprising such roads, and the maintenance obligations associated therewith, to the Association. Upon any conveyance by Declarant to the Association pursuant to this paragraph, the property so conveyed shall constitute Common Area under the Declaration.

(12.2) **Parking.** The following provisions shall apply to parking of automobiles and other vehicles on the Property:

(a) Ownership of a Lot shall entitle the Owner thereof to the exclusive use of two (2) automobile parking spaces located on the Common Area as designated by the Declarant and as amended by rules and regulations promulgated by the Board of Directors.

(b) Declarant shall designate, and after all Class B Lots shall cease to exist and be converted to Class A Lots, the Board of Directors shall designate, parking spaces on the Common Area for the exclusive use of guests and invitees of the Owners and such guests and invitees may use such parking spaces while visiting Owners for a period not to exceed one (1) week in time. No Owner shall park any automobile or other vehicle in the parking spaces designated for use by guests and invitees.

(c) There shall be no outside storage parking upon any Lot or the Common Area of any automobile, commercial vehicle, truck, tractor, mobile home or trailer (either with or without wheels), camper, camper trailer, boat or other watercraft, boat trailer, motorcycle, van, minivan or any other transportation device of any kind, except for Owners parking the foregoing within the parking spaces in the Owner's enclosed garage out of sight, and for passenger automobiles, trucks and vans (including passenger minivans) owned by guests or invitees which may be parked during daylight hours only in the designated guest and invitee parking spaces with no overnight parking allowed. No Owners or Occupants shall repair or restore any vehicle of any kind upon any Lot or Common Area except for emergency repairs, and then only to the extent necessary to enable movement thereof to a proper repair facility. No garage may be altered in such a manner that the number of automobiles which may be reasonably parked therein after the alteration is less

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than the number of automobiles that could have been reasonably parked in the garage as originally constructed.

(d) The Board of Directors of the Association will make such reasonable rules and regulations as it may elect with respect to the parking of vehicles on the Lot or the Common Area to implement, amplify or clarify the foregoing without the consent of the members of the Association.

ARTICLE XIII: GENERAL PROVISIONS

(13.1) Covenants Running with the Land. All provisions of this Declaration shall be construed to be covenants running with the land, and with every part thereof and interest therein, and every Owner or any other person or legal entity claiming an interest in any Lot, and his heirs, executors, administrators, successors and assigns, shall be bound by all of the provisions of this Declaration.

(13.2) Duration. The covenants, conditions and restrictions of this Declaration shall be binding for a term of twenty (20) years from the date this Declaration is recorded, after which they shall be automatically extended for successive and additional periods of ten (10) years each.

(13.3) Amendment. This Declaration may be amended by an instrument signed by not less than sixty-seven percent (67%) of the Class A and Class B members. Any such amendment or termination shall not be effective until an instrument evidencing such change has been filed of record in the Wake County Public Registry.

(13.4) Enforcement. If any Owner shall violate or attempt to violate any of these restrictions, failure to comply with any of the same shall be grounds for an action to recover sums due, for damages or injunctive relief, or both, maintainable by the Board of Directors on behalf of the Association, or, in proper case, by an aggrieved Owner. Any failure by Association or any other Owner to enforce any of the foregoing restrictions or other provisions shall in no event be deemed a waiver of their right to do so thereafter. Invalidity of any covenant, condition or restriction or other provision of this Declaration shall not affect the validity of the remaining portions thereof which shall remain in full force and effect.

(13.5) Headings. Headings are inserted only for convenience and are in no way to be constructed as defining, limiting, extending or otherwise modifying or adding to the particular paragraphs to which they refer.

(13.6) Unintentional Violation of Restrictions. In the event of unintentional violation of any of the foregoing restrictions with respect to any Lot, Declarant or its

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successors reserves the right (by and with the mutual written consent of the then Owner of Owners of such Lot) to change, amend, or release any of the foregoing restrictions as the same may apply to that particular Lot.

(13.7) Severability. The provisions of this Declaration are severable and the invalidity of one or more provisions hereof shall not be deemed to impair or affect in any manner the validity, enforceability or effect of the remainder hereof.

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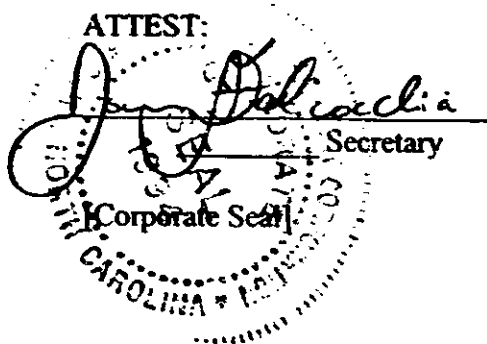
IN WITNESS WHEREOF, Declarant and Property Owner have caused this Declaration to be executed under seal on the day and year first above written.

DECLARANT:
PULTE HOME CORPORATION

By: *Larry Lippincott* (SEAL)
Larry Lippincott
Attorney-in-Fact

PROPERTY OWNER:
SARATOGA DEVELOPMENT CORPORATION

By: *Eddie Galambos*
President



STATE OF NORTH CAROLINA

COUNTY OF WAKE

I, *Sherril Brower*, a Notary Public for said County and State, do hereby certify that Larry Lippincott, Attorney-in-Fact for Pulte Home Corporation, a Michigan corporation, personally appeared before me this day and being by me duly sworn, says that he executed the foregoing instrument for and in behalf of Pulte Home Corporation, a Michigan corporation, and that his authority to execute and acknowledge said instrument is contained in an instrument duly executed, acknowledged and recorded in the Office of the Register of Deeds of Wake County, North Carolina, in Book 7811 at Page 534, and that this instrument was executed under and by virtue of the authority given by said instrument granting him power of attorney; that the said Larry Lippincott acknowledged the due execution of the foregoing instrument for the purposes therein expressed for and in behalf of the said Pulte Home Corporation, a Michigan corporation.

WITNESS, my hand and official seal this *9th* day of *October*, 1998.

My Commission Expires: *1/31/03*

Sherril Brower
Notary Public

HTPL: 66732.1

SHERRI B. BROWER
NOTARY PUBLIC
WAKE COUNTY, NC

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BK8165PG0971

STATE OF NORTH CAROLINA

COUNTY OF WAKE

I, Sherri B. Brower, a Notary Public of the County and State
aforesaid, hereby certify that John J. Salcedo, personally
appeared before me this day and acknowledged that he is _____ Secretary of
SARATOGA DEVELOPMENT CORPORATION, a NC corporation, and that
by the authority duly given and as the act of the corporation, the foregoing instrument was
signed in its name by its _____ President, sealed with its corporate seal and
attested by him as _____ Secretary.

Witness my hand and official stamp or seal, this 9th day of
October, 1996

Sherri B. Brower
Notary Public

My Commission Expires: 1/31/03

SHERRI B. BROWER
NOTARY PUBLIC
WAKE COUNTY, NC

NORTH CAROLINA — WAKE COUNTY

The foregoing certificate of Sherri B. Brower

Notar(y)(ies) Public

is (are) certified to be correct. This instrument and this certificate are duly registered at the date and
time and in the book and page shown on the first page hereof.

LAURA M. RIDDICK, Register of Deeds

By Laura M. Riddick
Asst. Deputy Register of Deeds

BK8165PG0972

EXHIBIT A

Lying and being in Wake County, North Carolina, and being more particularly described as follows:

Tract 1:

All of that property designated "TRACT 1," "TRACT 2," and that 1.310 acre tract designated "NEW DEDICATION TO TOWN OF CARY TO MEET RECREATION REQUIREMENT" as shown on map of Saratoga Orchard Park Townhomes recorded in Map Book 1997 at Page 630 in the Wake County Public Registry.

LESS AND EXCEPT: Lots 1, 2, 3 and 4 as shown on map of Saratoga Orchard Park Townhomes recorded in Map Book 1997 at Page 330 in the Wake County Public Registry.

Tract 2:

All property within a one mile radius of Tract 1 above.