

EX-1 98G0115 *Excalibur*

PRESENTED FOR

PREPARED BY AND HOLD NONE FOR NATION D. GARRETT, ATTORNEY AT LAW

000383 NORTH CAROLINA WAKE COUNTY

03 FEB 11 PM 5:09 DECLARATION OF PROTECTIVE COVENANTS FOR EXCALIBUR, PHASE I, RECORDED IN SECTIONS ONE AND TWO WAKE COUNTY

THIS DECLARATION OF PROTECTIVE COVENANTS, made this 4th day of February, 1993, by PULTE HOME CORPORATION, a Michigan corporation (hereinafter referred to as the "DECLARANT"), by and through ROBERT J. KOSNIK, its duly constituted and appointed Attorney-in-Fact (See Power of Attorney recorded in Book 5149, Page 221, Wake County Registry).

W I T N E S S E T H :

WHEREAS, Declarant is the owner of the real property described in ARTICLE I of this Declaration of Protective Covenants; and

WHEREAS, Declarant is desirous of subjecting the real property described in ARTICLE I hereof to the protective covenants hereinafter set forth, each and every provision of which is and are for the benefit of such real property and for each owner thereof, and each and every provision of which shall inure to the benefit of and shall pass and run with said real property and each and every lot or parcel thereof, and each protective covenant shall apply to and be binding upon the owners of each and every lot or parcel thereof, their heirs, successors in interest and/or assigns; and

WHEREAS, the real property described in ARTICLE I hereof was and is subjected by deed recorded in Book 5229, Page 41, Wake County Registry, to all of the terms and provisions of that certain instrument entitled "Master Declaration Of Covenants And Restrictions Of The Parkway Community Association, Inc." recorded in Book 4158, Page 262, Wake County Registry, as amended by documents recorded in Book 4166, Page 275, and in Book 4202, Page 739, and in Book 4348, Page 238, and in Book 4681, Page 562, and in Book 5229, Page 38, all of the Wake County Registry ("Master Covenants"); and

WHEREAS, the real property described in ARTICLE I hereof was and is further subjected by deed recorded in Book 5229, Page 41, Wake County Registry, to all of the terms and provisions of that certain instrument entitled "Declaration Of Covenants And Restrictions Of The Parkway Unit Owners Association" recorded in Book 4202, Page 687, Wake County Registry, as amended in Book 5229, Page 38, Wake County Registry ("Sub-Master Covenants"); and

WHEREAS, Parkway Associates, a North Carolina General Partnership (hereinafter referred to as the "Sub-Master Declarant"), is the named Declarant in the aforescribed "Master Covenants" and "Sub-Master Covenants" and the Westminster Company, a North Carolina corporation is the General Partner of the Sub-Master Declarant; and

WHEREAS, Sub-Master Declarant executes this instrument for the sole purpose of acknowledging that Sub-Master Declarant has reviewed the provisions hereof as required by agreement by and between Declarant and Parkway W/H, a North Carolina General Partnership, dated the 5th day of November, 1991.

March 8, 1993  
Robert J. Kosnik  
Attorney at Law

X  
X  
*Excalibur*  
Lot 9 8/16/93

NOW, THEREFORE, Declarant hereby declares that the real property described in and referred to in ARTICLE I hereof is and shall be further held, transferred, sold and conveyed to the protective covenants set forth below.

#### ARTICLE I

The real property (hereinafter also referred to as "lot," "lots" or "premises") which is and shall be held, transferred, sold and conveyed subject to the protective covenants set forth in the Articles of this Declaration of Protective Covenants is located in the Township of Cary, County of Wake, State of North Carolina, and is more particularly described as follows:

TRACT I: BEING all of the real property as shown on that certain map entitled "EXCALIBUR PHASE I - SECTION ONE, MacArthur Park P.U.D., Parcel MRL-A", dated 3-31-92 by Kenneth Close, Inc., Land Surveying, and recorded in Book of Maps 1992, Page 597, Wake County Registry.

TRACT II: BEING all of the real property as shown on that certain map entitled "EXCALIBUR PHASE I - SECTION TWO, MacArthur Park P.U.D., Parcel MRL-A", dated 3-31-92 by Kenneth Close, Inc., Land Surveying, and recorded in Book of Maps 1992, Page 598, Wake County Registry.

No property, other than that described above in this ARTICLE I, shall be deemed subject to this Declaration until specifically made subject hereto. The Declarant may, from time to time, and without approval of any owners of the lots which are part of the abovedescribed real property, subject additional real property to the protective covenants and restrictions set forth herein, said subjection to be by appropriate reference hereto in an instrument recorded in the Office of the Wake County Register of Deeds, North Carolina.

#### ARTICLE II

The property described in ARTICLE I hereof, as subdivided, shall be known and described as residential lots. No building (except as permitted under ARTICLE IV hereof) shall be erected, altered, placed or permitted to remain on any residential lot other than one detached single family dwelling not to exceed two stories in height, exclusive of basement and attic.

#### ARTICLE III

Unless prior architectural approval shall have been obtained pursuant to the provisions of ARTICLE XII hereof, all dwellings constructed on any lots subject to these protective covenants shall have an enclosed area of the main structure, exclusive of one-story open porches and garages, of at least 1,500 square feet for a one-story dwelling and of at least 1,600 square feet for a two-story dwelling.

#### ARTICLE IV

Notwithstanding any note to the contrary on any recorded map showing lots subject to these protective covenants, unless prior architectural approval shall have been obtained pursuant to the provisions of ARTICLE XII hereof, no dwelling shall be erected on any lot nearer to

Initials

By:       
Attorney at Law

the front lot line of said lot than TWENTY-FIVE (25) feet, provided, however, that on any corner lot the dwelling on such lot may face either street, but must be located not nearer than TWENTY-FIVE (25) feet to the street the dwelling is facing and not nearer than FIFTEEN (15) feet to the other street. No dwelling shall be erected on any lot nearer to the rear lot line than TWENTY (20) feet, nor nearer to the side lot line than FIVE (5) feet, provided that the aggregate of the side yards on any lot shall be at least FIFTEEN (15) feet, and provided further that the distance between dwellings on adjacent lots shall be not less than FIFTEEN (15) feet.

No outbuilding or other non-dwelling structure on any lot (excluding fences) shall be erected or located on any lot any nearer to any side lot line or rear lot line than FIVE (5) feet. No outbuilding, other non-dwelling structure, or fence shall be erected or located closer to the front lot line than the rearmost corners of the dwelling erected on the lot.

For the purposes of these protective covenants, the terms "dwelling" or "dwelling structure" shall mean the primary residential structure and attached garage, if any, erected on a lot and shall not include any outbuilding or other structure not attached to the dwelling and shall not include any fence erected on a lot. For the purposes of this covenant, eaves, steps and open porches shall not be considered as part of the dwelling.

The provisions contained in this Article shall not be construed to permit any portion of a dwelling, outbuilding, other non-dwelling structure, or fence on a lot to encroach upon another lot.

#### ARTICLE V

No dwelling shall be erected or placed or allowed to remain on any lot having a width less than FORTY (40) feet at the minimum building setback line and no dwelling shall be erected or placed or allowed to remain on any lot having an area of less than 7,500 square feet, except that a dwelling may be erected or placed on all of the lots as shown on the recorded plats described in ARTICLE I hereof, regardless of width at the minimum building setback line or area of the lot in square feet.

#### ARTICLE VI

No noxious or offensive trade or activity shall be carried on upon any of the lots which are subject to these protective covenants, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood. No trade materials or inventories (other than materials for construction of dwellings and other approved structures on the lots) may be stored upon the lots or premises and no trucks, tractors, inoperable automobiles, rubbish, trash, or unsightly materials of any kind may be stored, regularly placed, or allowed to remain on the lots or premises. No business activity or trade of any kind whatsoever, which shall include but not be limited to the use of any residence as a doctor's office or professional office of any kind, a fraternity house, a rooming house, a boarding house, an antique shop or gift shop, shall be carried on upon any lot; provided, however, upon prior approval of the Declarant, and upon such terms and condi-

tions specified in the approval, a dwelling or temporary trailer may be placed upon a lot and utilized as a temporary model home or sales facility or construction facility.

Except with the prior approval of Declarant (or of the Sub-Master Covenants Architectural Committee if Declarant owns no lots which are or may be subject to the provisions of these protective covenants), which approval may be withheld for any reason, no communication tower, television or radio antenna or tower, or satellite dish shall be erected or placed upon any lot. Each lot owner shall be responsible for and shall provide sufficient receptacles for garbage. Such garbage receptacle may be placed in any area of his/her lot so long as said receptacle is not visible from the front of the dwelling located on such lot.

ARTICLE VII

No trailer (except temporary construction/sales trailer(s) approved pursuant to the provisions of ARTICLE VI hereof), mobile home, tent, shack, or barn shall be erected or placed or permitted to remain on any lot which is subject to these protective covenants. A storage shed may be placed at the rear of each lot upon approval of the Sub-Master Covenants Architectural Committee, but only after the plans and specification for such storage shed or a photograph of such proposed storage shed together with a plot plan showing the proposed location of the shed have been submitted to and approved by such Architectural Committee. No travel trailers, boats or other recreational vehicles shall be stored on any lot which is subject to these protective covenants.

ARTICLE VIII

Declarant reserves the right to waive violations not in excess of TEN PERCENT (10%) of the front, rear, side street and side line setback requirements set forth in ARTICLE IV hereof. Upon the execution and recordation of such waiver of setback violation in the Office of the Register of Deeds of Wake County, North Carolina, such violations shall not thereafter be deemed to exist.

ARTICLE IX

No animals, livestock or poultry of any kind shall be raised, bred or kept on any lot which is subject to these protective covenants, except that, dogs, cats or other household pets (not to exceed four (4) such household pets at any one time) may be kept on a lot, provided that such household pets are not bred or maintained for any commercial purpose.

ARTICLE X

No lot, or portion thereof, shall be dedicated or used for a public street without the express written consent of the Declarant, its successors or assigns.

ARTICLE XI

No hedge or screen planting shall be erected or permitted to remain on any lot closer to the front lot line than the front of the dwelling erected on said lot.

## ARTICLE XII

ARCHITECTURAL APPROVAL. No building, fence, wall, mailbox or other structure shall be erected, placed or altered on any lot which is subject to these protective covenants until the provisions of ARTICLE VII of the Sub-Master Covenants recorded in Book 4202, Page 687, Wake County Registry, as amended, have been complied with. All of the terms and provisions of ARTICLE VII of the said Sub-Master Covenants are incorporated herein by reference.

## ARTICLE XIII

Enforcement of these protective covenants shall be by proceedings at law or in equity against any person or persons or entity or entities violating or attempting to violate any any of these protective covenants and such proceedings may be either to restrain such violation or attempted violation or to recover damages, or both.

## ARTICLE XIV

Invalidation of any one of these protective covenants by judgment or court order shall in no way affect any of the other protective covenants, which such unaffected protective covenants shall remain in full force and effect.

## ARTICLE XV

These protective covenants shall run with the land and shall be binding upon the owners of the land described in ARTICLE I hereof, their heirs, successors and/or assigns, and upon all persons claiming under them, for a period of TWENTY-FIVE (25) years from the date this Declaration of Protective Covenants is recorded in the Office of the Register of Deeds of Wake County, North Carolina, after which time these protective covenants shall be automatically extended and shall run with the land for successive periods of TEN (10) years unless an instrument signed by a majority of the then owners of the lots subject to these protective covenants has been recorded in the Office of the Register of Deeds of Wake County, North Carolina, in which said instrument such lot owners agree to change said protective covenants in full or in part.

These protective covenants may be modified or amended at any time by the recording in the Office of the Register of Deeds of Wake County, North Carolina, of a modification or amendment signed by the then record owners of at least TWO-THIRDS (2/3) of the lots subject to these protective covenants at the time of the recording; provided, however, so long as Declarant owns any lot or lots which are subject to these protective covenants or so long as Declarant owns any land shown on the Master Plan for MacArthur Park P.U.D. or Parkway P.U.D. intended for future subjection hereto, such modification or amendment by the lot owners shall not become effective until approved in writing by Declarant, its successors and/or assigns, and by PARKWAY ASSOCIATES, a North Carolina General Partnership (the Declarant named in the Sub-Master Covenants recorded in Book 4202, Page 687, Wake County Registry).

## ARTICLE XVI

Declarant reserves the right to subject the property described in ARTICLE I hereof to a contract with Carolina Power and Light Company for the installation of underground electric cables and/or the installation of street lighting,

either or both of which may require an initial payment and/or continuing monthly payment to Carolina Power and Light Company by the owner of each lot covered by these protective covenants.

IN TESTIMONY WHEREOF, Pulte Home Corporation, a Michigan Corporation, by and through ROBERT L. KOSNIK, its attorney-in-fact, has caused this instrument to be executed as of the day and year first above written.

PARKWAY ASSOCIATES, a North Carolina General Partnership, executes this document thereby accepting these protective covenants as the Sub-Master Declarant under the Sub-Master Covenants recorded in Book 4202, Page 687, Wake County Registry, as amended.

DECLARANT:

SUB-MASTER DECLARANT:

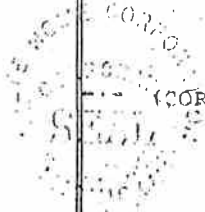
PULTE HOME CORPORATION,  
a Michigan Corporation

PARKWAY ASSOCIATES,  
a North Carolina General  
Partnership

BY: Robert L. Kosnik (SEAL)  
Robert L. Kosnik,  
Attorney-In-Fact for  
Pulte Home Corporation,  
a Michigan Corporation

BY: WESTMINSTER COMPANY, a  
North Carolina Corporation,  
General Partner of  
Parkway Associates

BY: Robert H. Huff (SEAL)  
via President



(CORPORATE SEAL)

ATTEST: Rosemary Gray  
Asst. Secretary

(CORPORATE SEAL)

NORTH CAROLINA

WAKE COUNTY

I, a Notary Public of the County and State aforesaid, do hereby certify that ROBERT L. KOSNIK, 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 and annexed instrument for and in behalf of and as an act 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, on March 27, 1992, and recorded in Book 5149 at Page 221, Wake County Registry, and that this instrument was executed under and by virtue of the authority given by said instrument giving him Power-of-Attorney; that the said Robert L. Kosnik acknowledged the due execution of the foregoing and annexed instrument for the purposes stated therein.

Witness my hand and official stamp or seal, this the day of \_\_\_\_\_, 1993.

Robert H. Huff  
NOTARY PUBLIC

My commission expires: 11/93

John H. Garret  
Secretary of State

