

CYNTHIA B FORTE  
BERKELEY COUNTY  
REGISTER OF DEEDS

Po Box 6122 ~ Moncks Corner, SC 29461 (843) 719-4084

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\*\*\* THIS PAGE IS PART OF THE INSTRUMENT \*\*\*

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Instrument #:	2016003202	Return To:	SIMONS & DEAN
Receipt Number:	12181		147 WAPPOO CREEK DRIVE SUITE 604
Recorded As:	RESTRICTIVE COVENANTS		CHARLESTON, SC, 29412
Recorded On:	February 04, 2016	Received From:	SIMONS & DEAN
Recorded At:	03:01:40 PM	Parties:	
Recorded By:	JENN LARA	Direct-	PULTE
Book/Page:	RB 2105: 300 - 306	Indirect-	CAIN CROSSING
Total Pages:	7		

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\*\*\* EXAMINED AND CHARGED AS FOLLOWS \*\*\*

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Recording Fee: \$12.00  
Tax Charge: \$0.00



*Cynthia B. Forte*  
Cynthia B Forte - Register of Deeds

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF BERKELEY )

**FIRST AMENDMENT TO DECLARATION OF COVENANTS,  
RESTRICTIONS AND EASEMENTS FOR CAIN CROSSING  
AND BYLAWS OF CAIN CROSSING PROPERTY OWNERS ASSOCIATION, INC.**

THIS First Amendment to Declaration of Covenants, Restrictions and Easements for Cain Crossing and Bylaws of Cain Crossing Property Owners Association, Inc. ("First Amendment") is made this day of ~~January~~, 2016, by Pulte, a Nevada general partnership ("Declarant").

~~ME~~ **FEBRUARY 1**  
WHEREAS, the original Declaration of Covenants, Restrictions and Easements for Cain Crossing ("Declaration") and Bylaws of Cain Crossing Property Owners Association, Inc. ("Bylaws") were recorded in the Berkeley County Register of Deeds Office on October 29, 2007, in Book R, Vi-6951 at Page 274, were recorded in the Berkeley County Register of Deeds Office.

WHEREAS, the Declaration was further supplemented by that First Supplemental Declaration of Covenants, Restrictions and Easements for Cain Crossing recorded in the Berkeley County Register of Deeds Office on January 6, 2010, in Book R VI-8279 at Page 5 ("First Supplemental Declaration"). Hereinafter, the Declaration and First Supplemental Declaration individually and collectively referred to as "Declaration".

WHEREAS, Article 2 of the Declaration defines "Turnover Date" as the earlier of "(i) the date when one hundred percent (100%) of the total planned units have been conveyed to a Residential Owner, or (ii) the date on which the Declarant records in the Public Records a document relinquishing its control of the Association to the Members".

WHEREAS, Turnover has not occurred, and Declarant is still in control of the Cain Crossing Property Owners Association, Inc. ("Association").

WHEREAS, Article 14, Section A of the Declaration states that

[u]ntil the Turnover Date and except as specifically provided in this Article, Declarant may amend this Declaration without the approval of any Member provided the amendment does not materially alter or change any Residential Owner's right to the use and enjoyment of such Residential Owner's Unit, or of the Association Property as set forth in this Declaration, and the amendment does not adversely affect the title to any Unit. . . [T]his Declaration may also be amended by the vote of written consent of sixty-seven percent (67%) of the votes held by each class of Members of the Association as such classes are set forth in the Association Documents . . .

WHEREAS, Article 14, Section F of the Declaration states that any ". . . amendment shall become effective upon the recording of a Certificate of Amendment to this Declaration setting forth the amendment in the Public Records".

WHEREAS, Section 15.3 of the Bylaws states that "until the Turnover Date, all amendments or modifications to these Bylaws and adoption or repeal of Bylaws shall only be made by action of the First Board . . ., which First Board shall have the power to amend, modify, adopt and repeal any Bylaws without the requirement of any consent, approval or vote of the Members."

WHEREAS, Section 5.13 of the Bylaws states that any "action required or permitted to be taken at a meeting of the Directors may be taken without a meeting if a consent in writing, specifically setting forth the action to be taken, shall be signed by all the Directors entitled to vote with respect to the subject matter thereof. Such consent shall have the same force and effect as a unanimous vote of Directors."

WHEREAS, Declarant wishes to amend the Declaration and Bylaws with this First Amendment as set forth herein below.

NOW, THEREFORE, Declarant hereby amends the Declaration and Bylaws, and any prior amendments to any of them, and same are hereby amended as follows.

#### **Amendments to Declaration**

1. Article V, Section D is replaced in its entirety with the following:

"Initially, the Board shall consist of three (3) members who will govern the Association. Prior to the Turnover Date, these Board members will be appointed by the Declarant. After the Turnover Date, the Board shall consist of no less than three (3) but no more than seven (7) members to be elected as provided in the Bylaws at a special meeting of the Association. Such special meeting shall be held within two (2) months of the Turnover Date. The appointed Board members serving at the time of the Turnover Date shall continue to serve until the election of the first Board members at such special meeting."

2. Article VI, Section H, Subsection 5 is replaced in its entirety with the following:

"To charge Interest on such Assessment from the date it becomes due, as well as a late charge, in a rate and an amount to be determined by the Board from time to time and as provided in the Bylaws, to defray collection costs."

3. Article XIII, Section B is replaced in its entirety with the following:

"In the event of a violation by any Residential Owner or any tenant of a Residential Owner, or any person residing with them, or their guests or invitees, of any of the provisions (other than the

non-payment of any Assessment or other monies) of this Declaration, the Articles, the Bylaws or the rules and regulations of the Association, or any amendments to any of them, the Association shall notify the Residential Owner and/or tenant of the Residential Owner of the violation by written notice. If such violation is not cured as soon as practicable and in any event within seven (7) days after such written notice, or if the violation is not capable of being cured within such seven (7) day period and the Residential Owner or tenant fails to commence and diligently proceed to completely cure such violation as soon as practicable within seven (7) days after written notice by the Association or if any similar violation is thereafter repeated, the Association shall have the right to charge a Residential Owner or tenant a fine of Twenty-Five Dollars (\$25), or other amount as determined by the Board from time to time and in its sole discretion, for each such violation, with continuing violations subject to additional fines and penalties as determined within the sole discretion of the Board. Further, the Association may also, in its sole discretion, and in addition to or in lieu of any of the foregoing fines and remedies:

1. Commence an action to enforce the performance on the part of the Residential Owner or tenant, or for such equitable relief as may be necessary under the circumstances, including injunctive relief; and/or
2. Commence an action to recover damages; and/or
3. Take any and all actions reasonably necessary to correct such failure, which action may include, where applicable, but is not limited to, removing any addition, alteration, Improvement or change which has not been approved by the "ARB" or erected in accordance with the ARB's approval (as herein defined), or performing any maintenance required to be performed by this Declaration .

All expenses incurred by the Association in connection with the correction of any failure, plus a service charge of ten percent (10%) of such expenses, and all expenses incurred by the Association in connection with any legal proceedings to enforce this Declaration, including reasonable Legal Fees, may be assessed against the applicable Residential Owner as an Individual Expense Assessment. The Association shall have a lien for any such Individual Expense Assessment and any associated Interest, costs or expenses, including Legal Fees, and may take such action to collect such Assessment or foreclose said lien in the manner of any other Assessment as provided in this Declaration. Any such lien shall only be effective from and after the recording of a claim of lien in the Public Records or applicable court of jurisdiction."

4. Article XIII, Section C is replaced in its entirety with the following:

"The Association shall have the right to charge a Residential Owner or tenant a fine of Twenty-Five Dollars (\$25), or other amount as determined by the Board from time to time and in its sole discretion, for each violation of this Declaration, the Articles, the Bylaws or the rules and regulations of the Association, or any amendments to any of them, with continuing violations subject to additional fines and penalties as determined within the sole discretion of the Board. The amount

of any fine shall be determined from time to time by the Board and in its sole discretion, and shall not exceed any amount mandated by applicable law, if any. Fines shall be issued via a written notice informing the Residential Owner or tenant of the date and nature of the violation and the amount of the fine and/or penalty. Fines shall be due and payable upon receipt. Unpaid fines shall bear interest at a rate of eighteen percent (18%) per annum, or such other rate as determined from time to time by the Board and in its sole discretion. Any fine levied against a Residential Owner or tenant shall be deemed an Individual Expense Assessment against the Residential Owner, and if not paid when due, all the provisions of the Declaration and Bylaws relating to the late payment of Assessments shall be applicable. If any fine is levied against a tenant and is not paid within ten (10) days after same is due, the Association shall have the right to evict the tenant as provided herein. Any Residential Owner shall have the right to appeal any fine issued pursuant to this Article. Any such appeal must be in writing and must be submitted to the Board within ten (10) days of the date of the issuance of the subject fine. The Board will consider all timely appeals at its next regularly scheduled meeting and issue a final decision thereon in writing thereafter to the aggrieved Residential Owner.

#### **Amendments to Bylaws**

5. The first paragraph only of Section 5.3 is replaced in its entirety with the following paragraph:

“Prior to the Turnover Date, the number of directors of the Association shall be three (3) who shall be appointed by the Declarant. After the Turnover Date, the number of directors shall be no less than three (3) and no more than seven (7) who shall be elected at a the annual meeting of the Association held within two (2) months after the Turnover Date. At such annual meeting following the Turnover Date, the Members shall elect no less than three (3) and no more than seven (7) directors to serve for such term of years as is determined the Board in its sole discretion, provided, however, any such term shall not exceed three (3) years. Those appointed directors serving at the time of the Turnover Date shall continue to serve until the election of such first elected directors at such annual meeting.”

7. The third and fourth paragraphs only of Section 5.3 are replaced in their entirety with the following paragraph:

Excluding that Board first elected by the Members, the Board shall make a good faith effort to have the terms of office of the directors staggered so that, except for an election to fill a vacancy or to fill a newly-created directorship, the terms of not less than one (1) nor more than three (3) directors (in the event of a Board of four (4) to seven (7) directors), and the terms of not less than one (1) nor more than two (2) directors (in the event of a Board of three (3) directors) shall expire at each annual meeting. Each director shall hold office until his death, resignation, retirement, removal, disqualification, or his successor is elected and qualified. Directors need not be members of the Association.

After the Turnover Date, the Members of the Association may, by a majority of the votes cast at any duly called annual or special meeting of the Members at which a quorum is present, increase or decrease the number of directors of the Association, provided, however, that the number of directors may not be increased to more than seven (7) nor decreased to less than three (3) without amendment of these Bylaws.

8. Section 8 is replaced in its entirety with the following:

“8. Late Fees/Fines. A Residential Owner who fails to timely pay any Assessment may be charged a late charge of Twenty-Five Dollars (\$25), or other amount as determined by the Board from time to time and in its sole discretion, per month for such late Assessment. The Association shall also have the right to charge a Residential Owner a fine of Twenty-Five Dollars (\$25), or other amount as determined by the Board from time to time and in its sole discretion, for each violation of these Bylaws, the Declaration, the Articles or the rules and regulations of the Association, or any amendments to any of them, with continuing violations subject to additional fines and penalties as determined within the sole discretion of the Board. The amount of the foregoing, or any, late charge or fine shall be determined from time to time by the Board and in its sole discretion, and shall not exceed any amount mandated by applicable law, if any.

Fines shall be issued via a written notice informing the Residential Owner or tenant of the date and nature of the violation and the amount of the fine and/or penalty. Fines shall be due and payable upon receipt. Unpaid fines shall bear interest at a rate of eighteen percent (18%) per annum, or such other rate as determined from time to time by the Board and in its sole discretion. Any fine levied against a Residential Owner or tenant shall be deemed an Individual Expense Assessment against the Residential Owner, and if not paid when due, all the provisions of the Declaration and Bylaws relating to the late payment of Assessments shall be applicable. If any fine is levied against a tenant and is not paid within ten (10) days after same is due, the Association shall have the right to evict the tenant as hereinafter provided. Any Residential Owner shall have the right to appeal any fine issued pursuant to this Article. Any such appeal must be in writing and must be submitted to the Board within ten (10) days of the date of the issuance of the subject fine. The Board will consider all timely appeals at its next regularly scheduled meeting and issue a final decision thereon in writing thereafter to the aggrieved Residential Owner.”

9. The terms and phrases used herein shall have the same meaning as provided for and used the Master Deed and Bylaws.

10. All other terms and conditions of the Declaration and Bylaws, and any prior amendments to any of them, not specifically modified herein remain in full force and effect. Any ambiguity between this First Amendment, the Declaration and Bylaws must be resolved in favor of this First Amendment.

IN WITNESS WHEREOF, I/We have executed this First Amendment to Declaration of Covenants, Restrictions and Easements for Cain Crossing and Bylaws of Cain Crossing Property

