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WAKE COUNTY, NC 710  
LAURA M RIDDICK  
REGISTER OF DEEDS  
PRESENTED & RECORDED ON  
09/24/2004 AT 15:45:00

BOOK:011028 PAGE:02608 - 02635

**PREPARED BY AND AFTER RECORDING HOLD FOR:  
THOMAS A. EARLS, ATTORNEY AT LAW (1)**

**DECLARATION OF COVENANTS AND RESTRICTIONS  
FOR DUNCAN'S RIDGE**

THIS DECLARATION, made this 24 day of September, 2004, by  
DUNCAN'S RIDGE PARTNERS, LLC, a North Carolina Limited Liability Company,  
(hereinafter referred to as "Declarant").

**WITNESSETH**

WHEREAS, Declarant is the owner of the property described on Exhibit "A" to  
this Declaration; and

WHEREAS, the Declarant desires to create on said property a planned  
community to be known as Duncan's Ridge, and to provide for the preservation of  
values, for the maintenance of common facilities and services, and for a vehicle for the  
administration and enforcement of covenants and restrictions; and

WHEREAS, Declarant has caused or will cause to be incorporated under the laws  
of the State of North Carolina, a non-profit corporation, Duncan's Ridge Association,  
Inc., for the purpose of exercising the functions aforesaid, and which are hereinafter  
more fully set forth;

NOW, THEREFORE, Declarant declares that the real property described in Article II, and such additions thereto as may hereinafter be made pursuant to Article II hereof, is and shall be held, transferred, sold, conveyed, given, donated, leased, occupied and used subject to the covenants, restrictions, conditions, easements, charges, assessments ("Assessments"), affirmative obligations, and liens (all hereinafter sometimes referred to as "the Covenants" or the "Covenants and Restrictions") hereinafter set forth.

ARTICLE I  
DEFINITIONS

The following words and terms when used in this Declaration or any supplemental declaration (unless the context shall clearly indicate otherwise) shall have the following meanings:

(a) "Association" shall mean and refer to Duncan's Ridge Association, Inc., a North Carolina non-profit corporation, its successors and assigns.

(b) "Duncan's Ridge" shall mean and refer to the lands in Holly Springs Township, Wake County, North Carolina, which are shown on recorded mapping in the Office of the Register of Deeds of Wake County, North Carolina.

(c) "Declarant" shall mean DUNCAN'S RIDGE PARTNERS, LLC, a North Carolina Limited Liability Company, its successors and assigns.

(d) "Developer" shall mean DUNCAN'S RIDGE PARTNERS, LLC, a North Carolina Limited Liability Company, its successors and assigns.

(e) "Affiliate" shall mean any corporation which is owned or controlled by the Declarant or the Developer, and any partnership, joint venture or limited liability company in which the Declarant or a Developer has fifty percent (50%) or more of the cash flow from such partnership or joint venture.

(f) The "Properties" shall mean and refer to the Existing Property described in Article II hereof, and additions thereto, as are subjected to this Declaration or any Supplementary Declaration under the provisions of Article II hereof.

(g) "Owner" shall mean and refer to the Owner as shown by the Real Estate Records in the Register of Deeds Office of Wake County, North Carolina, whether it be one (1) or more persons, firms, associations, corporations, or other legal entities, of fee simple title to any Residential Lot situated upon the Properties but, notwithstanding any applicable theory of a deed of trust, shall not mean or refer to the mortgagee or holder of a deed of trust, its successors or assigns, unless and pursuant to foreclosure or a proceeding or deed in lieu of foreclosure; nor shall the term "Owner" mean or refer to any lessee or Tenant of an Owner. In the event that there is recorded in the Office of the

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Register of Deeds of Wake County, North Carolina, a long-term contract of sale covering any Lot or Parcel of land within the Properties, the Owner of such Lot or Parcel of land shall be the Purchaser under said contract and not the fee simple title holder. A long-term contract of sale shall be one where the Purchaser is required to make payments for the Property for a period extending beyond nine (9) months from the date of the contract and where the Purchaser does not receive title to the Property until all such payments are made, although the Purchaser is given the use of said Property.

(h) "Tenant" shall mean and refer to the lessee under a written agreement for the rent and hire of a Lot in Duncan's Ridge.

(i) "Resident" shall mean and refer to each Owner and Tenant of a Lot who resides in Duncan's Ridge.

(j) "Member" shall mean and refer to all those Owners and Tenants who are Members of the Association as defined in Section 1 of Article III.

(k) "Common Properties" shall mean and refer to those tracts of land designated as "Sign Easement", "Drainage Easement" and "Open Space" on recorded maps of the Properties with all improvements thereon which are deeded or leased to the Association. The term "Common Properties" shall also include any personal property acquired or leased by the Association if said property is designated a "Common Property." All Common Properties are to be devoted to and intended for the common use and enjoyment of the Members of the Association, their guests, and visiting members of the general public (to the extent permitted by the Board of Directors of the Association) subject to the fee schedules and operating rules adopted by the Association.

(l) "Board of Directors" shall mean those persons elected or appointed to act collectively as the directors of the Association.

(m) "Bylaws" shall mean the bylaws of the Association as they are now or hereafter exist.

(n) "Institutional Lender" shall mean any bank, insurance company, trust company, real estate investment trust, savings and loan association, pension fund, or other first mortgage lender holding a first mortgage or deed of trust on any of the Property.

(o) "Lot" shall mean all residential lots approved from time to time by Wake County to be included within Duncan's Ridge for use as a site for a single-family detached dwelling. The Owners of Lots may not vary the lines and boundaries of Lots, except as otherwise provided herein; provided, the Owners may not reduce the size of any Lots except in accordance with appropriate re-subdivision approval by Wake County and the Owners may not re-subdivide the lots in such a manner as to increase the number of lots within the Properties. In the event the lines and boundaries of any said Lots are revised or varied pursuant hereto, the location of the easements reserved herein and

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reserved by the recorded plat shall automatically change so as to be located along and with the property lines of the Lots as revised. No road or easement shall be constructed over any Lot for the purpose of accessing an adjoining property without the written consent of the Declarant.

## ARTICLE II EXISTING PROPERTY AND ADDITIONS

Section 1. Existing Property. The real property which is and shall be held, transferred, sold, conveyed, given, donated, leased, occupied, and used subject to this Declaration is described as follows:

All that tract or parcel of land, situate, lying and being in Wake County, North Carolina, which is more particularly described in Exhibit "A" attached hereto and by specific reference made a part hereof.

All of the real property hereinabove described shall sometimes be referred to herein as the "Existing Property".

Section 2. Additions to Existing Property. Additional lands may become subject to, but not limited to, this Declaration in the following manner:

(a) Additions. The Declarant, its successors and assigns shall have the right, without further consent of the Association, by Supplementary Declaration, to bring within the plan and operation of this Declaration additional property. Such property may be subjected to this Declaration as one parcel or as several smaller parcels at different times.

The additions authorized under this and the succeeding subsection shall be made by recording a Supplementary Declaration of Covenants and Restrictions with respect to the additional property which shall extend the operation and effect of the Covenants and Restrictions of this Declaration to such additional property. The Supplementary Declaration may contain such complementary additions and/or modifications of the Covenants and Restrictions contained in this Declaration as may be necessary or convenient, in the sole judgment of the Declarant, to reflect the different character, if any, of the added properties and as are not inconsistent with the plan of this Declaration, but such modifications shall have no effect upon the Property described in Section 1, Article II above, or upon any other additions to the Properties.

(b) Other Additions. Upon approval in writing of the Association pursuant to a simple majority of the vote of those present at a duly called meeting, the owner of any property who desires to add such property to the plan and operation of this Declaration and to subject it to the jurisdiction of the Association, shall record a Supplementary Declaration of Covenants and Restrictions with respect to the additional property which

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shall extend the operation and effect of the Covenants and Restrictions of this Declaration to such additional property.

The Supplementary Declaration may contain such complementary additions and/or modifications of the Covenants and Restrictions contained in this Declaration as may be necessary or convenient which are not inconsistent with the plan or this Declaration, but such modifications shall have no effect upon the Property described in Section 1, Article II above, or upon any other additions to the Properties.

(c) Merger. Upon merger or consolidation of the Association with another association, as provided for in the By-Laws of the Association, its property rights and obligations may, by operation of law, be transferred to another surviving or consolidated association, or in the alternative, the properties, rights and obligations of another association may, by operation of law, be added to the properties of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the Existing Property, together with the Covenants and Restrictions established upon any other properties, as one plan. No merger or consolidation shall effect any revocation, within the Existing Property, including, without limitation, the maximum limits on Assessments and dues of the Association, or any other matter substantially affecting the interests of Members of the Association, or Institutional Lenders.

(k) Additional lands which become subject to this Declaration under the provisions of this Section 2 may in the future be referred to as a part of Duncan's Ridge.

### ARTICLE III MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

Section 1. Membership. The Declarant (so long as it owns a Lot within Duncan's Ridge) shall be a Member of the Association, and any creditor of an Owner of a Lot who acquires title to the Properties or any portion thereof pursuant to foreclosure shall be a Member of the Association. Every Owner of a Lot shall be a Member of the Association. The Association may issue to each Member a membership card, which shall expire upon sale by such Owner of his property in Duncan's Ridge. Owners who are exempt from the payment of Assessments shall not be Members of the Association unless otherwise specified herein.

Section 2. Voting Rights. The Association shall have two (2) types of regular voting membership.

TYPE "A": Type "A" Members shall be all Owners of Lots, excluding Declarant, its successors and assigns, of Property situated within the bounds of the property described on Exhibit "A" and each Type "A" Member shall be entitled to one

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(1) vote for each Lot Owned by such Member.

TYPE "B": Type "B" Members shall be the Declarant (Developer) and shall be entitled to five (5) votes for each Lot owned by it.

Section 3. Governance. The Association shall be governed by a Board of Directors consisting of three (3) Members.

Section 4. Election of The Board of Directors.

(a) The Type "A" Members together with the Type "B" Member Developer of the Property described on Exhibit "A" shall elect three (3) Directors;

(b) The method of electing directors shall be as determined by the Developer of the Property described on Exhibit "A,"; provided, however, when any property entitling the Owner to membership in the Association is owned of record in the name of two (2) or more persons or entities, whether fiduciaries, joint tenants, tenants in common, tenants partnership or in any other manner of joint or common ownership, or if two (2) or more persons or entities have the same fiduciary relationship respecting the same property, then unless the instrument or order appointing them or creating the tenancy otherwise directs and it or a copy thereof is filed with the Secretary of the Association, all such Owners shall be Members of the Association. The vote for such Property shall be exercised as the Owners thereof determine, but in no event shall more than the number of votes specified in Section 2 of this Article III be cast for any Property, and no fractional vote shall be cast.

(c) Notwithstanding any provision in this Section 4, or any other provision of this Declaration to the contrary, the right of the "Type B" Member to control the Board of Directors shall terminate not later than December 31, 2009.

Section 5. Quorum Required for Any Action Authorized at Regular or Special Meetings of the Association. The quorum required for any action which is subject to a vote of the members at an open meeting of the Association shall be as provided in Article III, Section 4 of the By-Laws.

Section 6. Proxies. All Members of the Association may vote and transact business at any meeting of the Association by proxy as provided in Article III, Section 5 of the By-Laws.

Section 7. Ballots by Mail. When required by the Board of Directors, there shall be sent with notices of regular or special meetings of the Association, a statement of certain motions to be introduced for vote for the Members and a ballot on which each Member may vote for or against each such motion. Each ballot which is presented at such meeting shall be counted in calculating the quorum requirements set out in Section 5 of this Article III. Provided, however, such ballots shall not be counted in determining whether a quorum is present to vote upon motions not appearing on the ballot.

ARTICLE IV  
PROPERTY RIGHTS IN THE COMMON PROPERTIES

Section 1. Members' Easements of Enjoyment in Common Properties. Subject to the provisions of these Covenants, the rules and regulations of the Association and any fees or charges established by the Association, every Member, and every guest and tenant of such Member, shall have a right of easement of enjoyment in and to the Common Properties, and such easement shall be appurtenant to and shall pass with the title of every parcel within the Properties.

Section 2. Title to Common Properties. The Declarant covenants for itself, its successors and assigns, that it shall convey by deed to the Association, at no cost to the Association, and subject to (i) this Declaration of Covenants and Restrictions, (ii) all other restrictions and limitations of record at the time of conveyance, (iii) any restrictions, limitations, conditions, or determinations as to the purposes and uses of the conveyed properties as stipulated in said deed, and (iv) any commitments by the Declarant to construct certain improvements thereon as stipulated in said deed, those Common Properties described in Section 4 of this Article IV hereof.

Section 3. Extent of Members' Easements. The rights and easements of enjoyment created hereby shall be subject to the following:

(a) The right of the Association, in accordance with its By-Laws, to borrow money from any lender for the purpose of improving and/or maintaining the Common Properties, and providing services authorized herein and in aid thereof to mortgage said properties provided, however, that any such mortgage is with the prior consent of two-thirds of the votes entitled to be voted by the Members of the Association, which consent may be evidenced by petition or by an affirmative vote of such two-thirds by Members voting in person or by proxy at a duly called meeting of the Association; and

(b) The right of the Association to take such steps as are reasonably necessary to protect the above-described properties against foreclosures;

(c) The right of the Association to suspend the right to vote of any Member for any period during which the payment of any Assessment against property owned by such Member remains delinquent, and for any period not to exceed sixty (60) days for any infraction of its published rules and regulations, it being understood that any suspension for either non-payment of any Assessment or a breach of the rules and regulations of the Association shall not suspend the right to use any roads belonging to the Association subject to the rules, regulations and fees, if any, established by the Association for such use.

(d) The right of Declarant or the Association by its Board of Directors to dedicate or transfer to any public or private utility, utility or drainage easements on any part of the Common Properties; and

(e) The right of the Association to dedicate or transfer all or any part of the Common Properties, to any public agency, authority, utility, or private concern for such purposes and subject to such conditions as may be agreed to by the Members, provided, however, that no such dedication or transfer shall be effective unless such shall be authorized by the affirmative vote of three-fourths (3/4) of the votes cast at a duly called meeting of the Association, subject to the quorum requirements established by Article III, Section 5, and unless written notice of the meeting and of the proposed agreement and action thereunder is sent to every Member of the Association at least thirty (30) days prior to such meeting. A true copy of such resolution together with a certificate of the results of the vote taken thereon shall be made and acknowledged by the President or Vice President and Secretary or Assistant Secretary of the Association and such certificate shall be annexed to any instrument of dedication or transfer of any parcel of land and improvements thereon affecting the Common Properties prior to the recording thereof. Such certificates shall be conclusive evidence of authorization by the membership. The gift or sale of any personal property owned by the Association shall be determined by the Board of Directors in its sole and uncontrolled discretion.

Section 4. The Declarant covenants for itself, its successors and assigns, that it will convey to the Association the Common Property shown on each recorded map of the Properties prior to the conveyance of any Residential Lot shown on such map.

#### ARTICLE V COVENANTS FOR ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant covenants, and each Owner of each Lot within the Properties, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to all the terms and provisions of this Declaration and to pay to the Association: (a) Annual Assessments or charges; and (b) Special Assessments or charges for the purposes set forth in this Article, such Assessments to be fixed, established and collected from time to time as hereinafter provided. The Annual and Special Assessments, together with such interest thereon and costs of collection thereof including a reasonable attorney's fee as hereinafter provided, shall be a charge and continuing lien on the real property and improvements thereon against which each such Assessment is made, and shall also be the personal obligation of the Owner of such property at the time when the Assessment first became due and payable. Co-owners shall be jointly and severally liable for the entire amount of the Assessment.

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Section 2. Purpose of Assessments. The Annual Assessments levied by the Association shall be used exclusively for the purposes outlined in Article VI hereof.

Section 3. Application of "Maximum" Assessment. The Maximum Regular Annual Assessment, as set forth in subparagraph (a) of this Section 3 and as is automatically increased annually pursuant to the provisions of subparagraph (d) below, shall be levied by the Association. If, however, the Board of Directors of the Association, by majority vote, determines that the important and essential functions of the Association may be properly funded by an Assessment less than the Maximum Regular Annual Assessment, it may levy such lesser Assessment.

If the Board of Directors shall levy less than the Maximum Regular Annual Assessment for any Assessment year and thereafter, during such Assessment year, determine that the important and essential functions of the Association cannot be funded by such lesser Assessment, the board may, by a majority of voting power (subject to an affirmative vote of 2/3 of each Type of Members), levy a Supplemental Assessment. In no event shall the sum of the initial and Supplemental Assessments for that year exceed the applicable Maximum Regular Annual Assessment.

If the Board of Directors, by a majority of voting power, determines that the important and essential functions of the Association will not be properly funded in any one (1) year, or in any one (1) year and all subsequent years, it may request approval of a specified increase in the Maximum Regular Annual Assessment for either one (1) year only, or for that one (1) year and all subsequent years, by the vote of the Members at a duly called meeting of the Association, subject to the quorum requirements established by Article III, Section 5. Should the Members vote in favor of such proposed increase, it shall be deemed approved and may be levied by the Board. An increase in the Maximum Regular Annual Assessment for one (1) year only pursuant to the provisions hereof shall in no way affect the Maximum Regular Annual Assessment for subsequent years on increases thereof in subsequent years.

(a) From and after January 1, 2005, the Maximum Regular Annual Assessment shall be \$120.00 for each Lot and shall be automatically increased in each instance by percentage as set forth in Section 3(d) of this Article, and as may be increased pursuant to the provisions set forth immediately above.

(b) Assessments shall be payable yearly, on the first day of each year.

(c) The Board of Directors may authorize a billing agent to collect the Assessments provided for herein.

(d) From and after January 1, 2006, the Maximum Regular Annual Assessment shall be automatically increased each year by an amount of ten percent (10%) percent per year over the previous year.

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Section 4. Special Assessments for Improvements and Additions. In addition to the maximum Regular Annual Assessments authorized by Section 3 hereof, the Association may levy Special Assessments for the following purposes:

(a) Construction, reconstruction, repair, or replacement of capital improvements upon the Common Properties, including the necessary fixtures and personal property related thereto;

(b) For additions to the Common Properties;

(c) To provide for the necessary facilities and equipment to offer the services authorized herein;

(d) To repay any loan made to the Association to enable it to perform the duties and functions authorized herein;

(e) Such Special Assessment, before being charged, must have received the approval of the Members of the Association by the favorable vote of seventy-five (75%) percent of the votes cast at a duly called meeting of the Association, subject to the quorum requirements established by Article III, Section 5. The notice of such meeting shall include one (1) statement from those Directors favoring the Special Assessment and one (1) statement from those Directors opposing the Special Assessment, containing the reasons for those Directors' support and opposition for the Assessment.

This provision shall be interpreted to mean that the Association may make in any one (1) year an Annual Assessment up to the maximum set forth in Section 3 of this Article V, plus an additional Special Assessment. Such Special Assessment in any one (1) year may not exceed a sum equal to the amount of the Maximum Regular Annual Assessment for such year except for emergency or repairs required as a result of storm, fire, natural disaster, or other casualty loss. The fact that the Association has made an Annual Assessment for an amount up to the Maximum Regular Annual Assessment shall not affect its right to make a Special Assessment during the year.

Section 5. Reserve Funds. The Association shall establish reserve funds from its Annual Assessments to be held in reserve in an interest drawing account or investments as a reserve for:

(a) Major rehabilitation or major repairs;

(b) For emergency and other repairs required as a result of storm, fire, natural disaster, or other casualty loss;

(c) Initial costs of any new service to be performed by the Association; and

(d) For the periodic maintenance, repair, and replacement of improvements to the Common Properties that it is obligated to maintain.

Section 6. Date of Commencement of Annual Assessments, Due Date, Initial Lots Subject to Assessment. Notwithstanding anything in the foregoing to the contrary, the Annual Assessments provided for herein shall commence no earlier than January 1, 2005, but not later than December 31, 2005.

Section 7. Duties of the Board of Directors. The Board of Directors of the Association shall fix the amount of the Annual Assessment. Written notice of Assessment shall thereupon be sent to every Member subject thereto.

Section 8. Effect of Non-Payment of Assessment: The Personal Obligation of the Owner; the Lien; Remedies of Association. If the Annual Assessment or any Special Assessment is not paid on or before five (5) days after the due date specified in Section 3(b) hereof, then such Assessment shall be deemed delinquent and shall (together with interest thereon at the maximum annual rate of 10% from the due date and cost of collection thereof including a reasonable attorney's fee as hereinafter provided) become a charge and continuing lien on the land and all improvements thereon against which such Assessment is made.

If the Assessment is not paid within thirty (30) days after the due date, the Association may bring an action at law against the Owners personally and there shall be added to the amount of such Assessment the costs of preparing the filing of the Complaint in such action and a reasonable attorney's fee, and in the event a judgment is obtained, such judgment shall include interest on the Assessment as above provided and reasonable attorney's fee together with the costs of the action. Such personal obligation shall not pass to the successor in title to the land unless assumed by such successor, or is required by applicable law.

Section 9. Subordination of the Lien. The Lien of the Assessments provided for herein shall be subordinate to the lien of any first deed of trust now or hereafter placed upon any properties subject to Assessment. In the event a creditor acquires title to any property subject to Assessment pursuant to foreclosure or any other proceeding or deed in lieu of foreclosure, said creditor shall be subject only to Assessments accruing after such acquisition.

Section 10. Annual Statements. The President, Treasurer, or such other Officer as may have custody of the funds of the Association shall annually, within ninety (90) days after the close of the fiscal year of the Association, prepare and execute under oath a general itemized statement showing the actual assets and liabilities of the Association at the close of such fiscal year, and a statement of revenues, costs and expenses. It shall be necessary to set out in the statement the name of any creditor of the Association, provided, however, that this requirement shall be construed to apply only to creditors of more than Two Hundred and no/100 (\$200.00) dollars. Such Officer shall furnish to each Member of the Association who may make request therefor in writing, a copy of such statement, within thirty (30) days after receipt of such request. Such copy may be furnished to such Member either in person or by mail. Any holder of a first mortgage on

a lot(s) or Lot(s) (and any Insurers or Guarantors of such first mortgage) shall be entitled upon written request to a financial statement for the immediately preceding fiscal year.

Section 11. Annual Budget. The Board of Directors shall prepare and make available to each Member of the Association, at least sixty (60) days prior to the first day of the following fiscal year, a budget outlining anticipated receipts and expenses for the following fiscal year. The fiscal books of the Association shall be available for inspection at all reasonable times.

Section 12. Working Capital Fund. Simultaneously with the closing of the sale of each Lot by Declarant, the purchaser shall remit to the Association the equivalent of the full annual assessment then in effect to be held as a working capital fund. The purpose of said fund is to insure that the Association Board will have adequate cash available to meet unforeseen expenses, and to acquire additional equipment or services deemed necessary or desirable. Amounts paid into the fund shall not be considered advance payment of regular assessments.

## ARTICLE VI FUNCTIONS OF ASSOCIATION

Section 1. Ownership and Maintenance of Properties. The Association shall be authorized to own and/or maintain Common Properties, equipment, and improvements devoted to the following uses:

- (a) For Entrances (including signs, irrigation systems, landscaping and water therefor) throughout the Properties; and
- (b) For maintenance and repair of all Drainage Easements and Open Space.

Section 2. Minimum List of Functions and Services. The "Minimum List of Functions and Services" shall establish and define the minimum level of functions and services which the Association must furnish or cause to be furnished to its Members. So long as the Declarant is engaged in the development of Properties which are subject to the terms of this Declaration, the Association shall not reduce the level of functions and services it furnishes to its Members below such minimum level without the prior written consent of the Declarant. The "Minimum List of Functions and Services" is as follows:

(a) The Association shall provide the administration necessary to carry out the Association's obligations and business under the terms of this Declaration, the Articles of Incorporation of the Association and the Bylaws of the Association.

(b) The Association shall administer and enforce the covenants and restrictions established in this Declaration, including, but not limited to, the following:

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- (1) The Association shall set Assessments, levy cash Assessments, notify the Members of such Assessments, and collect such Assessments.
  - (2) The Association shall prepare accurate indexes of Members, Votes and Assessments;
  - (3) The Association shall operate an Architectural Review Board;
  - (4) The Association shall maintain the Common Properties;
  - (5) The Association shall hold Annual Meetings, Special Meetings, and Referendums as required, hold elections for the Board of Directors as required and give Members "proper notice" as required;
  - (6) The Association shall prepare Annual Statements and Annual Budgets, and shall make the financial books of the Association available for inspection by Members at all reasonable times.
- (c) The Association shall provide appropriate liability and hazard insurance coverage for improvements and activities on the Common Properties.
- (d) The Association shall provide appropriate director's and officers' legal liability insurance, and indemnify persons pursuant to the provisions of the Bylaws of the Association.
- (e) The Association shall keep a complete record of all its acts and corporate affairs.
- (f) The Association shall (except where such services are adequately provided by governmental agencies) provide regular cleanup of all Access Easements.
- (g) The Association shall (except where such services are adequately provided by governmental agencies) provide general maintenance of all identification, informational and directional signs, and neighborhood and other area signs, including, but not limited to, painting, repair work and replacement as needed.

(h) Insurance coverage shall be governed by the following provisions:

- (1) Liability. Public liability insurance shall be secured by the Association with limits of liability of no less than One Million Dollars (\$1,000,000.00) per occurrence and shall include an endorsement to cover liability of the Owners as a group or a single Owner. There shall also be obtained such other insurance coverage as the Association shall determine from time to time to be desirable and necessary.
- (2) Premiums. Premiums for insurance policies purchased by the Association shall be paid by Association and charged to the Owners as an assessment according to the provisions of Article V above.
- (3) Proceeds. All insurance policies purchased by the Association shall be for the benefit of the Association, the Owners and their mortgagees, and the Declarant, as their interest may appear.

**Section 4. Obligation of the Association.** The Association shall not be obligated to carry out or offer any of the functions and services specified by the provisions of this Article except as specified in Section 2 of this Article VI. The functions and services to be carried out or offered by the Association at any particular time shall be determined by the Board of Directors of the Association taking into consideration the funds available to the Association and the needs of the Members of the Association. The functions and services which the Association is authorized to carry out or to provide, may be added or reduced at any time upon the affirmative vote of fifty one (51%) percent of the votes cast by the Type "A" Members at a duly called meeting of the Association; provided, however, no such changes shall be effected without the prior written consent of the Declarant so long as the Declarant or its successors or assigns is a "B" Member of the Association.

**Section 5. Mortgage and Pledge.** The Board of Directors of the Association shall have the power and authority to mortgage the property of the Association and to pledge the revenues of the Association as security for loans made to the Association which loans shall be used by the Association in performing its authorized functions and services; provided that any such mortgage is with the prior consent of two-thirds of the Members of the Association, which consent may be evidenced by petition or by an affirmative vote of two-thirds of the Association.

ARTICLE VII  
ARCHITECTURAL CONTROL  
AND OTHER RESTRICTIONS

Section 1. Purpose. The primary purpose of these covenants and restrictions and the foremost consideration in the origin of same has been the creation of a community which is aesthetically pleasing and functionally convenient. The establishment of certain objective standards relating to design, size and location of dwellings and other structures makes it impossible to take full advantage of the individual characteristics of each parcel of Property and of technological advances and environmental values. In order to implement the purposes of these covenants, the Declarant does hereby establish objective standards and guidelines, which shall include without limitation, the following and shall be binding on all Property Owners within Duncan's Ridge:

(a) No Lot shall be used except for single family residential purposes and an apartment within the Owner's dwelling as set forth herein. No structure of a temporary nature shall be erected, placed, used or permitted on any Lot for residential purposes.

(b) No building shall be erected, altered, placed or permitted to remain on any Lot other than one (1) detached, single-family dwelling not to exceed two and one-half (2 ½) stories in height, one (1) attached private garage for not more than three (3) cars, and one (1) outbuilding containing a minimum of one hundred (100) square feet, as restricted hereinbelow; provided, an apartment may be kept and maintained in a dwelling constructed if said apartment is approved by Wake County and no more than two (2) persons reside in said apartment and the use of said apartment is not noxious or offensive to any Lot Owner exercising reasonable judgment relative thereto. No dwelling shall be permitted on any Lot unless such dwelling has a heated area of the main structure, exclusive of basement, porches, garages and storage area, of not less than 2,000 square feet for a one-story dwelling and 2,200 square feet for a one and one-half or two story dwelling.

(c) No mobile homes, pre-manufactured homes or modular homes shall be erected, altered, placed or permitted to remain on any Lot. No dwelling shall have or contain metal siding or exposed cinder block; provided, wood grain aluminum or vinyl siding reasonably maintained shall be permitted. All materials used in the exterior construction of a dwelling shall be new building materials. The exterior construction of any dwelling must be 100% finished. There shall be no more than one (1) outbuilding (sheds or otherwise) located on any Lot.

(d) All materials used in the exterior construction of outbuildings shall be new equivalent to materials used on dwellings. All outbuildings shall be painted or

sided with similar and consistent materials and colors as the dwelling on the Lot and kept in a reasonable state of repair. No outbuilding shall contain exposed cinder block.

(e) No building shall be located on any Lot so as to be nearer than 10 feet from an adjacent interior side subdivision property line nor within 50 feet of the front or rear property lines. For purposes of this covenant, eaves, steps, and open porches shall not be considered part of the building. In the event that a building is constructed nearer to a Lot line than is permitted by this Article, such violation may be waived by the execution and recordation in the Wake County Registry of an instrument in writing signed by the Declarant, if then in existence, and the owners of the adjacent Lot(s) on the side on which the violation occurs. Upon the execution and recordation of such waiver, said violation shall not thereafter be deemed to exist. Minor violations of setback requirements, hereby defined as 5% of such requirements or less, shall not be cause for corrective action by Declarant or by other record Owners of Lots. In the event a Lot Owner builds a dwelling which is located on two or more adjacent lots, the multiple lots shall be considered as one for the purpose of setback requirements and for determining the number of permissible outbuildings as hereinbefore stated, and must meet the standards of the Zoning Ordinances of Wake County, North Carolina, or its successor agency, and the rules and regulations promulgated thereunder, as may from time to time hereafter be amended or modified. Notwithstanding the above, all buildings or other improvements shall be located on any Lot in accordance and compliance with any and all applicable building, zoning or other ordinances and regulations of the County of Wake or other applicable regulatory agency.

(f) The exterior of all dwellings or other buildings must be completed within nine (9) months after the construction of same shall have commenced, except where such completion is impossible or would result in great hardship upon the Owner, or due to strikes, fires, national emergency or natural calamities beyond the Owner's control.

#### Section 2. Controls.

(a) No building, fence, mailbox or other structure shall be erected, placed, or altered, nor shall a building permit for such improvement be applied for on any Property in Duncan's Ridge until the proposed building plans and specifications shall have been approved in writing by the Declarant, or by the Architectural Review Board of the Association if such review responsibility has been delegated to the Association by the Declarant. The Declarant further reserves the right to promulgate and amend from time to time architectural standards and construction specifications (hereinafter referred to as the "Architectural Standards and Construction Specifications") for all Properties within Duncan's Ridge and such Architectural Standards and Construction Specifications shall establish, define, and expressly limit those standards and specifications which will be approved within the Properties, including, but not limited to, architectural style, siding material, and driveway material. Refusal or approval of plans or specifications may be based by the Declarant upon any ground, including purely aesthetic considerations, which in the sole and uncontrolled discretion of the Declarant shall seem sufficient. No

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alteration in the exterior appearance of any building, structure, or other improvements shall be made without like prior written approval by the Declarant. One (1) copy of all plans and related data shall be furnished the Declarant for its records. In the event approval of such plans is neither granted nor denied within thirty (30) days following receipt by the Declarant of written demand for approval, the provisions of this paragraph shall be thereby waived.

(b) Each Property Owner shall provide space for the parking of automobiles off public streets prior to the occupancy of any building or structure constructed on said property in accordance with reasonable standards established by the Declarant. No boat, marine craft, hovercraft, aircraft, recreational vehicle, motorcycle, pick-up truck, camper, travel or other types of trailer, motor home, camper body or similar vehicle or equipment may be parked for storage in the Subdivision unless parked in a permitted garage or screened from view from the street and adjoining lots. This restriction shall not apply to any vehicle, machinery or equipment temporarily parked and in use for the construction, maintenance or repair of a residence in the immediate vicinity.

Trucks with tonnage in excess of one ton and any vehicle with painted advertisement shall not be permitted to park overnight within the Subdivision, specifically excepting those (i) used by a builder during the construction of improvements, and (ii) trucks parked inside a permitted garage. In no event shall trucks exceeding two tons be permitted to park overnight within the Subdivision.

No vehicle of any size which transports inflammatory or explosive cargo may be kept in the Subdivision at any time.

No vehicles or similar equipment shall be parked or stored in an area visible from any street except passenger automobiles, passenger vans, motorcycles, pick-up trucks and pick-up trucks with attached bed campers that are in operating condition and have current license plates and inspection stickers and are in daily use as motor vehicles on the streets and highways of the State of North Carolina. No vehicle shall be parked on any street in the Subdivision except in the immediate vicinity of and for the purpose of viewing a model house maintained by a builder.

(c) Except as may be required by legal proceedings, no sign shall be erected or maintained on any Property by a Property Owner, a tenant, a contractor, or a subcontractor, until the proposed sign size, color, content, number of signs, and location of sign(s) shall have been approved in writing by the Declarant. Realtor's signs for purposes of selling a Property are expressly permitted. Refusal or approval of size, color, content, number of signs, or location of sign(s) may be based by the Declarant upon any ground, including purely aesthetic considerations, which in the sole and uncontrolled discretion of the Declarant seems sufficient. The Declarant further reserves the right to promulgate and amend from time to time uniform sign regulations (the "Uniform Sign Regulations") which shall establish standard design criteria for all signs, including, but not limited to, real estate sales signs, erected upon any Property in Duncan's Ridge.

The Declarant and its agents shall have the right, whenever there shall have been placed or constructed on any Property in Duncan's Ridge any sign which is in violation of these restrictions, to enter immediately upon such Property where such violation exists and summarily remove the same at the expense of the Property Owner.

(d) It shall be the responsibility of each Property Owner, tenant, contractor, or subcontractor to prevent the development of any unclean, unsightly, unkempt, unhealthy, or unsafe conditions of buildings or grounds on any Property which shall tend to substantially decrease the beauty or safety of Duncan's Ridge, the neighborhood as a whole, or the specific area. Specifically, it shall be the duty of each Property Owner of any Lot which borders on or contains ditches to keep such drainage areas, including slopes, maintained regularly and to properly tend to eroded or washed out areas. The Declarant and its agents shall have the right to enter upon any Property for the purpose of correcting such conditions, including, but not limited to, the removal of trash which has collected on the Property and the fill and grading of eroded or washed out areas. The cost of such corrective action shall be paid by the Property Owner. Such entry shall not be made until fifteen (15) days after the Owner of the Property has been notified in writing of the need to take corrective action and unless such Owner fails to perform the corrective action within said fifteen (15) day period; provided, however, that should such conditions pose a health or safety hazard, such entry shall not be made until the Owner has been notified in writing of the need to take immediate corrective action and unless such Owner fails to perform the corrective action immediately. The provisions of this paragraph shall not create any obligation on the part of the Declarant to take any such corrective action.

(e) With the exception of making provision for driveway access and the removal of dead or diseased vegetation, no cutting of standing trees shall be permitted within twenty (20) feet of the front property line of any Lot.

(f) Prior to the occupancy of a building or structure on any Property, proper and suitable provisions shall be made for the disposal of sewage to a system approved by the County of Wake.

(g) Prior to the occupancy of a building or structure on any Property, proper and suitable provisions for water shall be made by connection with a well approved by the County of Wake and a system of water delivery approved by the State of North Carolina. A community water system with Heater Utilities has heretofore been established by Declarant to serve the Properties.

(h) The Declarant reserves unto itself, its successors and assigns, and its agents, a perpetual, alienable, and releasable easement and right, on, over and under the Properties to erect, maintain, operate, and use electric, water, Community Antenna Television, and telephone poles, wires, cables, conduits, drainage ways, and other suitable equipment for the conveyance and use of electricity, water, telephone equipment, gas, drainage, or other public conveniences or utilities on, in or over those

portions of such Property as may be reasonably required for utility line purposes; provided, however, that no such utility easement shall be applicable to any portion of such Property as may (a) have been used prior to the installation of such utilities for construction of a building whose plans were approved pursuant to these covenants by the Declarant, or (b) such portion of the Property as may be designated as the site for a building on a plot plan for erection of a building which has been filed with the Declarant and which has been approved in writing by the Declarant. These easements and rights expressly include the right to cut any trees, bushes, or shrubbery, make any grading of the soil, or to take any other similar action reasonably necessary to provide economical and safe utility installation to maintain reasonable standard of health, safety, and appearance. All utility lines on the Properties shall be underground. No overhead utility lines shall be permitted.

(i) The Declarant reserves the right to subject the Property to a contract with Carolina Power and Light Company for the installation of street lighting, which requires a continuing monthly payment to Carolina Power and Light Company by each residential customer.

Section 3. Review Board. The Architectural Review Board shall be composed of at least three (3) Members. At such time as the Declarant no longer owns any Lots, the members of the Architectural Review Board shall be appointed by the Board of Directors of the Association. Until such time as the Declarant no longer owns any Lots, Declarant shall appoint all members of the Architectural Review Board. At least one (1) Member of the Association other than the Declarant shall be a Member of the Architectural Review Board at all times.

#### ARTICLE VIII CROPS

Owners of Lots may plant, cultivate and harvest crops upon said Lot; provided, (1) said crops are planted and cultivated solely for use and consumption by the Owner of said Lot, his family, guests and invitees, and (2) the total combined area upon which said crops are planted and grown shall not exceed one-tenth of the total area of the Lot. In no event shall crops, plants or foliage, the planting, cultivation, possession or consumption of which is illegal, be planted.

#### ARTICLE IX PETS

No animals, livestock or poultry of any kind shall be raised, bred or kept on any property in the Subdivision except that dogs, cats or other household pets may be kept for the purpose of providing companionship for the private family. Animals are

not to be raised, bred or kept for commercial purposes or for food. It is the purpose of these provisions to restrict the use of the property so that no person shall quarter on the premises cows, horses, bees, hogs, sheep, goats, guinea fowls, ducks, chickens, turkeys, skunks or any other animals that may interfere with the quietude, health or safety of the community. No more than four (4) pets will be permitted on each lot. Pets must be (i) restrained or confined and kept on the on the homeowner's back lot inside a fenced area or within the house and not allowed to go upon the lots of others or run free and unrestricted upon the streets of the subdivision, and (ii) kept under proper supervision and control, so as to not cause or create a nuisance or menace to owners and occupants of other lots. It is the pet owner's responsibility to keep the lot clean and free of pet debris. All animals must be properly tagged for identification.

ARTICLE X  
COMMUNICATION/MICROWAVE DISHES

Communication/Microwave dishes shall be positioned so that they are behind a dwelling. If such dishes are visible from a street, they must be screened by fencing and/or shrubs so that they cannot be seen from a street.

ARTICLE XI  
STORAGE RECEPTACLES

No fuel tanks or similar storage receptacles may be exposed to view, and may be installed within the main dwelling house, within an outbuilding, buried underground, or above ground so long as they are entirely screened from view from the streets and other Lots.

ARTICLE XII  
FENCING

All fencing constructed and placed upon a Lot by the Owner thereof shall be kept and maintained in a reasonable state of repair. In the event fencing is constructed and placed upon a property line between two Lots, said fencing shall be kept and maintained jointly by the Owners of said adjoining Lots in a reasonable state of repair. All costs with respect to the maintenance and upkeep of said fencing shall be borne by the Lot owners. No barbed wire or chain-link fencing shall be permitted on any lot. All boundary fencing shall be constructed of wood material.

ARTICLE XIII  
GENERAL PROVISIONS

Section 1. Duration. The Covenants and Restrictions of this Declaration and any Amendments thereto shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, Declarant, or the Owner of any land subject to this Declaration, their respective legal representatives, heirs, successors, and assigns, for a period of thirty (30) years from the date this Declaration is recorded. Upon expiration of said thirty (30) year period, this Declaration shall be automatically extended for successive periods of ten (10) years. The number of ten (10) year extension periods hereunder shall be unlimited, and this Declaration shall be automatically extended upon the expiration of the initial thirty (30) year period, or upon the expiration of each subsequent ten (10) year extension period, unless at a duly called meeting of the Association, two-thirds (2/3) or more of the total vote of each type of Member entitled to be cast by all the Members of the Association shall vote in favor of terminating this Declaration at the end of its then current term. The presence at the meeting of Members or proxies entitled to cast sixty (60%) percent of the total vote of the Membership shall constitute a quorum. It shall be required that written notice of any meeting at which such a proposal to terminate this Declaration is to be considered, setting forth the fact that such a proposal will be considered, shall be given each member at least thirty (30) days in advance of said meeting. In the event that the Members of the Association vote to terminate this Declaration, the President and Secretary of the Association shall execute a certificate which shall set forth the Resolution of Termination adopted by the Association, the date of the meeting of the Association at which such resolution was adopted, the date that Notice of such Meeting was given, the total number of votes of Members of the Association, the total number of votes required to constitute a quorum at a meeting of the Association, the total number of votes present at said meeting, the total number of votes necessary to adopt a Resolution terminating this Declaration, the total number of votes cast in favor of such Resolution, and the total number of votes cast against such Resolution. Said certificate shall be recorded in the Register of Deeds Office, Wake County, North Carolina, and may be relied upon for the correctness of the facts contained therein as they relate to the termination of this Declaration.

Section 2. Amendments. All proposed Amendments to this Declaration shall be submitted to a vote of the Members at a duly called meeting of the Association subject to the quorum requirements established by Article III, Section 5, and any such proposed amendment shall be deemed approved if two-thirds (2/3) of the votes of each type of Member cast at such meeting vote in favor of such proposed amendment. Notice shall be given each Member at least thirty (30) days prior to the date of the meeting at which such proposed amendment is to be considered. If any proposed amendment to this Declaration is approved by the members as set forth above, the President and Secretary of the Association shall execute an Addendum to this Declaration which shall set forth the Amendment, the effective date of the Amendment (which in no event shall be less than sixty (60) days after the date of the meeting of the Association at which such Amendment was adopted), the date of the meeting of the Association at which such Amendment was

adopted, the date that notice of such meeting was given, the total number of votes required to constitute a quorum at a meeting of the Association, the total number of votes present at said meeting, the total number of votes cast for and against the Amendment, the number of votes necessary to adopt the Amendment, the total number of votes cast in favor of such Amendment and the total number of votes cast against the Amendment. Such Addendum shall be recorded in the Office of the Register of Deeds, Wake County, North Carolina.

So long as Declarant is entitled to elect a majority of the Members of the Board of Directors of the Association, no Amendment or Termination of this Declaration shall be made without the consent of Declarant; and until the end of the period of development no Amendment of this Declaration shall be made without the consent of Declarant which would have the effect of creating a disproportionate increase in the Maximum Regular Annual Assessment, the actual assessment levied, or any Special Assessment of any Class of Owners.

Notwithstanding the foregoing, Declarant, for so long as it shall retain control of the Board of Directors of the Association, and, thereafter, the Board of Directors, may amend this Declaration as shall be necessary, in its opinion, with the consent and approval of VA or FHA, FHLMC and FNMA and without the consent of any Owner, in order to qualify the Association for tax-exempt status, to correct obvious errors and omissions herein, and to qualify for VA, FHA, FHLMC and FNMA approvals. Such amendment shall become effective upon the date of its recordation in the Wake County Registry.

Section 3. Notices. Any notice required to be sent to any Member under the provisions of this Declaration shall be deemed to have been properly sent, and notice thereby given, when delivered personally or sent by mail, with the proper postage affixed, to the address of such Member. It shall be the obligation of each Member to immediately notify the Secretary of the Association in writing of any change of address.

Section 4. Enforcement. Enforcement of these Covenants and Restrictions shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate or circumvent any provision hereof, either to restrain violation or to recover damages, and against the land and to enforce any lien created by these Covenants; and failure by the Association or any Member or the Declarant to enforce any Covenant or Restriction herein contained for any period of time shall in no event be deemed a waiver or estoppel of the right to enforce same thereafter.

Section 5. Severability. Should any Covenant or Restriction herein contained, or any Article, Section, Subsection, sentence, clause, phrase or term of this Declaration be declared to be void, invalid, illegal, or unenforceable, for any reason, by the adjudication of any Court or other tribunal having jurisdiction over the parties hereto and the subject matter hereof, such judgment shall in no way affect the other provisions hereof which are hereby declared to be severable and which shall remain in full force and effect.

Section 6. Interpretation. The Board of Directors of the Association shall have the right to determine all questions arising in connection with this Declaration of Covenants and Restrictions, and to construe and interpret its provisions, and its determination, construction, or interpretation shall be final and binding. In all cases, the provisions of this Declaration of Covenants and Restrictions shall be given that interpretation or construction that will best tend toward the consummation of the general plan of improvements.

Section 7. Authorized Action. All actions which the Association is allowed to take under this instrument shall be authorized actions of the Association if approved by the Board of Directors of the Association in the manner provided for in the By-Laws of the Association, unless the terms of this instrument provide otherwise.

Section 8. Other Agreements. Notwithstanding anything contained herein to the contrary, all the provisions of these Covenants shall be subject to and conform with the provisions of the Zoning Ordinances of the County of Wake, North Carolina, and the rules and regulations promulgated thereunder, as may from time to time hereafter be amended or modified;

Section 9. Limited Liability. In connection with all reviews, acceptances, inspections, permissions, consents or required approvals by or from Declarant and/or the Association contemplated under this Declaration, Declarant and/or the Association shall not be liable to an Owner or to any other person on account of any claim, liability, damage, or expense suffered or incurred by or threatened against an Owner or such other person and arising out of or in any way relating to the subject matter of any such review, acceptances, inspections, permissions, consents or required approvals, whether given, granted, or withheld.

Section 10. Termination of Association. In the event that this Declaration be declared to be void, invalid, illegal, or unenforceable in its entirety, or in such a significant manner that the Association is not able to function substantially as contemplated by the terms hereof, for any reason, by the adjudication of any Court or other tribunal having jurisdiction over the parties hereto or if the Members of the Association should vote not to renew and extend this Declaration as provided for in Article VIII, Section 1, all Common Properties owned by the Association at such time shall be transferred to a Trustee appointed by the Superior Court of Wake County, North Carolina, which Trustee shall own and operate said Common Properties for the use and benefit of Owners within the Properties as set forth below:

(a) Each Lot located within the Properties shall be subject to an Annual Assessment which shall be paid by the Owner of each such Lot to the Trustee. The amount of such Annual Assessment and its due date shall be determined solely by the Trustee, but the amount of such Annual Assessment on any Lot shall not exceed the amount actually assessed against that Lot in the last year that assessments were levied by the Association, subject to the adjustments set forth in subparagraph (b) immediately below;

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(b) The Maximum Regular Annual Assessment which may be charged by Declarant or Trustee hereunder on any particular Lot or Parcel may be automatically increased each year by an amount of ten (10%) percent.

(c) Any past due Annual Assessment together with interest thereon at the maximum annual rate allowed by law from the due date and all costs of collection including reasonable attorneys' fees shall be a personal obligation of the Owner at the time the Annual Assessment became past due, and it shall also constitute and become a charge and continuing lien on the Lot and all improvements thereon, against which the Assessment has been made, in the hands of the then Owner, his heirs, devisees, personal representatives and assigns.

(d) The Trustee shall be required to use the funds collected as Annual Assessments for the operation, maintenance, repair, and upkeep of the Common Properties. The Trustee may charge as part of the cost of such functions the reasonable value of its services in carrying out the duties herein provided. The Trustee shall not have the obligations to provide for operation, maintenance, repair, and upkeep of the Common Properties once the funds provided by the Annual Assessment have been exhausted.

(e) The Trustee shall have the right to convey title to the Common Properties, and to assign its rights and duties hereunder, provided that the transferee accepts such properties subject to the limitations and uses imposed hereby and affirmatively acknowledges its acceptance of the duties imposed hereby.

(f) The Trustee shall have the power to dedicate or transfer the Common Properties free and clear of the limitations imposed hereby; provided, however, that such disposition shall first be approved in writing by two-thirds (2/3) vote of each Type of Member or in the alternative shall be found to be in the best interests of the Owners of property within the Properties by the Superior Court of Wake County, North Carolina.

Section 11. Management and Contract Rights of Association. Declarant may enter into a contract with a Management Company or manager for the purposes of providing all elements of the operation, care, supervision, maintenance, and management of the property. However, no such contract shall be binding upon the Association except through express adoption or ratification of the terms and conditions of such contract. Any contract or lease entered into by Declarant or by the Association while the Declarant is in control thereof shall contain a provision allowing the Association to terminate such contract without justification or penalty after transfer of management by the Declarant to the Association.

Section 12. Rights of Noteholders.

(a) Any institutional holder of a first mortgage (and any Insurer or Guarantor of such first mortgage) on a Lot will, upon written request, be entitled to:

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(i) Inspect the books and records of the Association during normal business hours,

(ii) Receive an annual financial statement (audited if required herein) of the Association within ninety (90) days following the end of its fiscal year,

(iii) Receive written notice of all meetings of the Association and the right to designate a representative to attend all such meetings,

(iv) Receive written notice of any condemnation or casualty loss that affects the Lot securing its mortgage,

(v) Receive written notice of any sixty-day delinquency in the payment of assessments or charges owed by the owner of any Lot on which it holds the mortgage,

(vi) Receive written notice of a lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Owner's Association,

(vii) Receive written notice of any proposed action that requires the consent of a specified percentage of mortgage holders, and

(viii) Receive a copy of any Supplementary Declaration which contains additions, provisions or modifications to the Declaration pursuant to the provisions of Article II, Section 2(a) hereof thirty (30) days prior to the recording of such Supplementary Declaration.

(b) Without the prior written consent of not less than 66% of Institutional Lenders, the Association may not:

(i) Abandon, partition, subdivide, encumber, sell or transfer real estate or improvements which are owned by the Association for the benefit of all members.

(ii) Alter or amend the method of determining assessments that may be levied against the owner.

#### Section 13. Easements.

(a) Walks, Drives, Utilities, Etc. All Properties shall be subject to such easements for gas lines, telephone, streets and electric power lines, television antenna lines, storm drainage, water lines, sewer lines and other utilities; ingress, egress and regress and otherwise as shall be established and defined or described by Declarant by recorded maps or deeds of easement, and the Association shall have the power and authority to grant and establish further such easements upon, over, under and across the

Properties.

(b) Declarant and the Association reserve the right to subject the Property to a contract with an appropriate power company for the installation of underground electric cables and lines and/or the installation of street lighting, either or both of which may require an initial payment and/or a continuing monthly payment to said power company by the Owner of each Lot within said property.

(c) Declarant hereby reserves an easement of access to and over the Common Properties for the purposes of installing utilities and other improvements required or necessary in the proper development of Duncan's Ridge.

Section 14. Member Type Approvals. In all provisions in this Declaration, the Articles of Incorporation and By-Laws of the Association which require approval of a percentage of Members such shall mean the percentage of each Type of Member.

IN WITNESS WHEREOF, Declarant has caused this instrument to be executed as of the day and year first above written.

DUNCAN'S RIDGE PARTNERS, LLC

By: [Signature]  
Manager

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

I, the undersigned, a Notary Public in and for the County and State aforesaid, do hereby certify that Thomas A. Beebe personally appeared before me this day and acknowledged that he is Manager of DUNCAN'S RIDGE PARTNERS, LLC, a North Carolina limited liability company, and that by authority duly given and as the act of said limited liability company, the foregoing Declaration of Covenants and Restrictions was signed by himself as its Manager.

Witness my hand and official seal this 21 day of September, 2004.

[Signature]  
Notary Public

My Commission Expires: \_\_\_\_\_

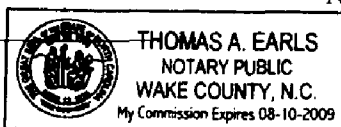


EXHIBIT " A "  
TO DECLARATION OF COVENANTS AND RESTRICTIONS  
FOR DUNCAN' S RIDGE

BEGINNING at a point in the center line of SR 1123 marked by a RR spike, said point being the following courses and distances from the intersection of the center line of SR 1123 and SR 1119; South 87 degrees 48 minutes 26 seconds East 543.00 feet, South 71 degrees 47 minutes 20 seconds East 218.66 feet and South 55 degrees 58 minutes 48 seconds East 241.42 feet; thence leaving the center line of SR 1123 runs North 38 degrees 44 minutes 58 seconds West 117.27 feet to a PK nail and continuing the same course 98.59 feet to an existing iron pipe in the eastern line of property (now or formerly) of Elmer C. Burt (see Deed in Book 1864, Page 627, Wake Registry); runs thence with Burt's eastern line North 06 degrees 24 minutes 39 seconds East 961.41 feet to an existing iron pipe, southeast corner of property (now or formerly) of Margaret Hall Karam (see Deed Book 2881, Page 587, Wake Registry); runs thence with Karam's line North 03 degrees 12 minutes 57 seconds East 1657.31 feet to an existing iron pipe, southwest corner (now or formerly) of property of Hubert McLean (see Deed in Book 983, Page 163, Wake Registry); runs thence with McLean's line South 84 degrees 19 minutes 49 seconds East 1184.82 feet to a new iron pipe; runs thence (a new line) through the property of Joyce Mitchell Sauls, (which line now becomes her western property line) South 03 degrees 12 minutes 57 seconds West 3338.82 feet to a new iron pipe on the northern right of way line of SR 1123 (gravel surface) and continuing 30 feet in a southerly direction to a PK nail in the center line of SR 1123; runs thence with the center line of SR 1123 the following courses and distances: North 77 degrees 42 minutes 43 seconds West 94.92 feet to a point, North 78 degrees 51 minutes 17 seconds West 208.21 feet to a point, North 78 degrees 52 minutes 07 seconds West 184.85 feet to a point, North 75 degrees 10 minutes 06 seconds West 97.74 feet to a point, North 66 degrees 05 minutes 18 seconds West 76.06 feet to a point, North 56 degrees 57 minutes 24 seconds West 74.85 feet to a point, North 47 degrees 41 minutes 06 seconds West 98.88 feet to a point, North 44 degrees 51 minutes 34 seconds West 244.83 feet to a point, North 44 degrees 50 minutes 45 seconds West 112.41 feet to a point, North 48 degrees 51 minutes 17 seconds West 100.92 feet to a point and North 52 degrees 58 minutes 33 seconds West 187.53 feet to the point and place of beginning, and containing 100 acres (D.M.D. Computation) all according to a survey for Martin Marietta Corporation prepared by Cawthorne and Associates, Registered Land Surveyors, P.A., dated October 23, 1986.



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Yellow probate sheet is a vital part of your recorded document.  
Please retain with original document and submit for rerecording.



Wake County Register of Deeds  
Laura M. Riddick  
Register of Deeds

North Carolina - Wake County

The foregoing certificate \_\_\_ of \_\_\_\_\_

\_\_\_\_\_ *Thomas A. Ericks* \_\_\_\_\_

\_\_\_\_\_ Notary(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: *Frank C. Bay*  
Assistant/Deputy Register of Deeds

This Customer Group  
\_\_\_\_\_ # of Time Stamps Needed

This Document  
\_\_\_\_\_ New Time Stamp  
*28* # of Pages

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WAKE COUNTY, NC 142  
LAURA M RIDDICK  
REGISTER OF DEEDS  
PRESENTED & RECORDED ON  
10/31/2006 AT 10:20:44

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Prepared by and after recording mail to:  
Duncan's Ridge Partners, LLC, 125 Hampton Pines Drive, Morrisville, NC 27560

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

**FIRST AMENDMENT TO  
DECLARATION OF COVENANTS AND RESTRICTIONS  
FOR DUNCAN'S RIDGE**

THIS FIRST AMENDMENT TO DECLARATION OF COVENANTS AND RESTRICTIONS FOR DUNCAN'S RIDGE, is made this 30 day of October, 2006, by DUNCAN'S RIDGE PARTNERS, LLC, a North Carolina limited liability company (hereinafter referred to as "Declarant").

**WITNESSTH:**

WHEREAS, the subdivision known as Duncan's Ridge has been subjected to that certain Declaration of Covenants and Restrictions for Duncan's Ridge recorded in Book 10028, Page 2608, Wake County Registry (hereinafter referred to as the "Declaration"); and

WHEREAS, Declarant desires to amend the Declaration by increasing the "Maximum Regular Annual Assessment" as that term is defined in Article V, Section 3, and by adding detached private garages as a permitted "building" as that term is defined in Article VII, Section 1; and

WHEREAS, (i) the desired amendments were submitted to a vote of the Members at a duly called meeting of the Association, (ii) a quorum of Members were present and voting at the meeting either in person or by proxy, (iii) the amendments

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were approved by a vote in excess of two-thirds (2/3) of the votes of each type of Member cast at the meeting in favor of the amendments.

NOW, THEREFORE, DECLARANT HEREBY:

1. AMENDS SECTION 3 OF ARTICLE V OF THE DECLARATION TO READ AS FOLLOWS:

**Section 3. Application of "Maximum" Assessment.** The Maximum Regular Annual Assessment, as set forth in subparagraph (a) of this Section 3 and as is automatically increased annually pursuant to the provisions of subparagraph (d) below, shall be levied by the Association. If, however, the Board of Directors of the Association, by majority vote, determines that the important and essential functions of the Association may be properly funded by an Assessment less than the Maximum Regular Annual Assessment, it may levy such lesser Assessment.

If the Board of Directors shall levy less than the Maximum Regular Annual Assessment for any Assessment year and thereafter, during such Assessment year, determine that the important and essential functions of the Association cannot be funded by such lesser Assessment, the board may, by a majority of voting power (subject to an affirmative vote of 2/3 of each Type of Members), levy a Supplemental Assessment. In no event shall the sum of the initial and Supplemental Assessments for that year exceed the applicable Maximum Regular Annual Assessment.

If the Board of Directors, by a majority of voting power, determines that the important and essential functions of the Association will not be properly funded in any one (1) year, or in any one (1) year and all subsequent years, it may request approval of a specified increase in the Maximum Regular Annual Assessment for either one (1) year only, or for that one (1) year and all subsequent years, by the vote of the Members at a duly called meeting of the Association, subject to the quorum requirements established by Article III, Section 5. Should the Members vote in favor of such proposed increase, it shall be deemed approved and may be levied by the Board. An increase in the Maximum Regular Annual Assessment for one (1) year only pursuant to the provisions hereof shall in no way affect the Maximum Regular Annual Assessment for subsequent years on increases thereof in subsequent years.

(a) From and after January 1, 2006, the Maximum Regular Annual Assessment shall be \$329.00 for each Lot and shall be automatically increased in each instance by percentage as set forth in Section 3(d) of this Article, and as may be increased pursuant to the provisions set forth immediately above.

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(b) Assessments shall be payable yearly, on the first day of each year.

(c) The Board of Directors may authorize a billing agent to collect the Assessments provided for herein.

(d) From and after January 1, 2007, the Maximum Regular Annual Assessment shall be automatically increased each year by an amount of ten percent (10%) percent per year over the previous year.

2. AMENDS SECTION 1(b) OF ARTICLE VII OF THE DECLARATION TO READ AS FOLLOWS:

(b) No building shall be erected, altered, placed or permitted to remain on any Lot other than one (1) detached, single-family dwelling not to exceed two and one-half (2 ½) stories in height, one (1) attached or detached private garage for not more than three (3) cars, and one (1) outbuilding containing a minimum of one hundred (100) square feet, as restricted hereinbelow; provided, an apartment may be kept and maintained in a dwelling constructed if said apartment is approved by Wake County and no more than two (2) persons reside in said apartment and the use of said apartment is not noxious or offensive to any Lot Owner exercising reasonable judgment relative thereto. No dwelling shall be permitted on any Lot unless such dwelling has a heated area of the main structure, exclusive of basement, porches, garages and storage area, of not less than 2,000 square feet for a one-story dwelling and 2,200 square feet for a one and one-half or two story dwelling.

Except as herein amended, all other provisions of the Declaration shall remain in full force and effect.

IN WITNESS WHEREOF, the undersigned Declarant and Lot Owners have caused this First Amendment to Declaration of Covenants and Restrictions for Duncan's Ridge to be executed the day and year first above written.

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DUNCAN'S RIDGE PARTNERS, LLC

By: *[Signature]*  
Thomas A. Beebe,  
Manager

STATE OF NORTH CAROLINA  
COUNTY OF ~~WAKE~~ *Chatham*

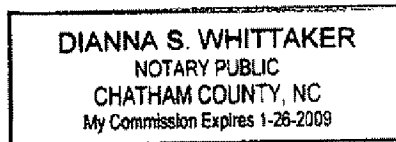
I, the undersigned, a Notary Public in and for the County and State aforesaid, hereby certify that Thomas A. Beebe, Manager of Duncan's Ridge Partners, LLC, a North Carolina limited liability company, personally known to me or known to me by his presentation of his North Carolina Driver's License, personally appeared before me this day and acknowledged the due and voluntary execution of the foregoing instrument, by authority duly given and as the act of said limited liability company.

Witness my hand and official stamp or seal, this 30 day of October, 2006.

*Dianna S. Whittaker*  
Notary Public  
Printed Name of Notary:

*Dianna S. Whittaker*

My commission expires:



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**Yellow probate sheet is a vital part of your recorded document.  
Please retain with original document and submit for rerecording.**

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**Wake County Register of Deeds  
Laura M. Riddick  
Register of Deeds**

**This Customer Group**  
\_\_\_\_\_ # of Time Stamps Needed

**This Document**  
\_\_\_\_\_ New Time Stamp  
5 \_\_\_\_\_ # of Pages