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Douglass & Douglass

WAKE COUNTY, NC 151
LAURA M RIDDICK
REGISTER OF DEEDS
PRESENTED & RECORDED ON
11/28/2006 AT 10:39:31

BOOK:012282 PAGE:01228 - 01247

**DECLARATION
OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR
SUMMERDALE**

THIS DECLARATION, made on the date hereinafter set forth by Douglass & Barham, 3700 Computer Drive, Raleigh, North Carolina 27609, a North Carolina general partnership.

WITNESSETH THAT:

WHEREAS, Declarant is the owner of the Properties, as hereinafter defined in Article I, upon which it intends to develop a residential community known as Summerdale (hereinafter "Summerdale"); and

WHEREAS, Declarant desires to convey the Properties to Owners and the Association, subject to certain protective covenants, conditions, restrictions, reservations, liens and easements as hereinafter set forth.

NOW, THEREFORE, Declarant hereby declares that all of the Properties, including the Lots, and Common Areas, are and shall be held, transferred, sold, conveyed, leased, mortgaged, occupied, used and otherwise disposed of subject to the following easements, restrictions, covenants, conditions, charges and liens as hereinafter set forth, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the Properties and Summerdale. These easements, restrictions, covenants, conditions, charges and liens shall run with the land and shall be binding upon all parties having or acquiring any right, title or interest in the Properties, or any part thereof, and shall inure to the benefit of each Owner.

ARTICLE I
DEFINITIONS

Unless the context shall prohibit or otherwise require, each of the following words or terms, whenever used herein with an initial capital letter, shall have the following meaning in this Declaration, the Articles and the Bylaws.

(a) "Amenities" mean any facility constructed, erected, or installed on or within the Common Area for the use, benefit and enjoyment of the Members.

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(b) "Architectural Committee" means the Architectural Committee appointed by the Board of Directors, pursuant to the Bylaws, or in the absence of such Committee, the Board of Directors.

(c) "Articles" mean the Articles of Incorporation for the Association, including any amendments thereto, filed with the Office of the North Carolina Secretary of State.

(d) "Assessment" means a levy imposed, from time to time, against the Owner and his Lot by the Association in the manner hereinafter provided.

(e) "Association" means the Summerdale Homeowners Association, Inc., a North Carolina non-profit corporation, and its successors.

(f) "Board of Directors" or "Board" means the Association's Board of Directors, the governing body of the Association.

(g) "Building" means any structure on the Properties.

(h) "Bylaws" means the bylaws, from time to time adopted by the Association, to govern the Association's administration and operation.

(i) "Town" means the Town of Fuquay-Varina.

(j) "Common Area" means, singularly and collectively, all real property, easements, improvements and Amenities thereto and thereon, owned or maintained by the Association for the common use or enjoyment by the Owners, including without limitation, the Open Space, the storm water detention ponds and storm water drainage pipes which are located within or adjacent to the Property and which are not maintained by a governmental entity.

(k) "Common Expense" and "Common Expenses" means all sums lawfully assessed by the Association, including expenses: for public utilities, the maintenance, repair and replacement of street landscapes, easement areas, subdivision signs and entrances areas; for the management and administration of the Association; for the maintenance, repair or replacement of Amenities and improvements in the Common Area and easement areas, including the landscaping thereon; for the maintenance and repair of detention ponds and other improvements in the Common Areas; for such hazard, liability and other insurance premiums as the Association is required or elects to maintain; for ad valorem taxes and governmental assessments levied against the Common Area; and for expenses declared as a Common Expense by this Declaration or Bylaws or agreed upon by the Members as a Common

Expense.

(l) "Declarant" means Douglass & Barham, a North Carolina general partnership, and any successor or assignee of Douglass & Barham's rights, powers and authorities as Declarant hereunder (in whole or in part).

(m) "Declaration" means this Declaration of Covenants, Conditions and Restrictions for Summerdale, and all amendments thereto filed in the Office of the Register of Deeds of Wake County, North Carolina.

(n) "Lender" shall mean any bank, savings and loan association, insurance company, mortgage lender or Person.

(o) "Lot" means any numbered plot of land, as shown upon any recorded subdivision map of the Properties, which is zoned and intended for residential use and on which a structure may be constructed. Lot specifically excludes any Common Area.

(p) "Lot in Use" means any Lot on which a structure has been constructed and for which a certificate of occupancy has been issued by the Town. A Lot shall be a Lot in Use as of the first day of the month next following the day on which the certificate of occupancy has been issued for the Lot by the Town.

(q) "Member" means each Owner of a Lot, including Declarant or its assignee so long as it or its assignee owns any Lot. No Owner shall have more than one membership per Lot.

(r) "Owner" means the record owner, whether one or more Persons, of the fee simple, or undivided fee simple, interest in a Lot, as shown by the public records of Wake County, North Carolina, but excluding Persons having such interest merely as security for the performance of an obligation.

(s) "Person" means any individual, partnership, limited liability company, corporation, trustee, association or other legal entity.

(t) "Plat" means that plat for Summerdale Subdivision, Phase 1, recorded in Book of Maps 2006, Page 2393, Wake County Registry and any additions annexed thereto made subject to this Declaration.

(u) "Property" or "Properties" mean that certain real property more particularly described in Exhibit A, and any additional real property made subject to this Declaration pursuant to Article X, Section 5, hereof, together with all improvements which may at any time be located thereon.

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ARTICLE II
PROPERTY RIGHTS

Section 1. Owner's Easements of Enjoyment. Every Owner shall have a right and easement of use and enjoyment in and to the Common Area, which shall be appurtenant to and shall not be separated from title to the Owner's Lot, subject to the Easements of Article III and to the following provisions:

(a) The right of the Association to charge reasonable administrative and other fees for the use of the Common Area.

(b) The right of the Association to suspend the voting rights, and the right to use any Common Area and Amenities, by an Owner for any period during which any Assessment against his Lot remains unpaid, and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations; provided that no Owner will be denied access to his Lot.

(c) The right of the Association, with the written assent of two-thirds (2/3) of each class of Members, to borrow money for the purpose of maintaining or improving the Common Area; provided, any deed of trust permitted by law shall be subject to the rights and easements of the Owners and the Association in the Common Area.

(d) the right of the Association, in accordance with the Town Code or the Association Bylaws, to dedicate, transfer or exchange all or any part of the Common Area.

(e) the right of the Association to formulate, publish, impose and enforce rules and regulations for the use and enjoyment of the Common area.

(f) the right of the Association to dedicate, sell or transfer all, or any part, of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Members, with written assent of two-thirds (2/3) of each class of Members.

Section 2. Delegation of Use. Subject to Section 1 above, any Owner may delegate, in accordance with the Bylaws, his rights of use and enjoyment in and to the Common Area, to a member of his family, his lawful tenants or others who reside on such Owner's Lot.

Section 3. Title to the Common Area. Declarant, and others subjecting real property to this Declaration, hereby covenant for

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themselves, their heirs and assigns that, prior to the time of the conveyance of the first Lot within Summerdale Subdivision, Phase One, and the first Lot within any subsequent Phases, it will convey to the Association fee simple title to the Common Area therein, and all improvements thereon, free and clear of all encumbrances and liens except drainage and utility easements and other encumbrances of record. Owner further covenants that it will assign to the Association all of its right, title, interest and obligations in that certain Storm Water Discharge Easement and Drainage Easement Agreement across the lands of Thomas E. Fuller and Martha S. Fuller recorded in Book 012134 ,Page 01784, Wake County Registry.

ARTICLE III
EASEMENTS

Section 1. General Easements and Association Undertakings.

All of the Properties, including the Lots and Common Area, shall be subject to such easement for streets, utility lines, telecommunication lines, storm drainage facilities and other public utilities, landscape easements and buffers, as established by Declarant prior to subjecting the Properties to this Declaration, including, without limitation, those shown on the Plat. The Association shall in accordance with the Articles and Bylaws have the power and authority to grant and establish in, upon, over, under and across the Common Area such further easements as are requisite for the convenient use and enjoyment of the Properties and the Owners.

Section 2. Easement for Government Agencies. An easement is hereby established, for the benefit of any governmental agency, public utility company and public service agency, over all the Common Area and Lots as necessary for the setting, removal, and reading of utility meters, the operation, maintenance and replacement of gas, water, sewer, electrical, telephone and communication lines and facilities, the fighting of fires, collection of garbage, postal delivery, police protection and emergency and rescue activities.

Section 3. Temporary Construction Easement. Subject to such reasonable rules and regulations as may be established by the Association for the protection of the Common Area, a temporary easement over, through and to the Common Area is hereby reserved, conveyed and established in favor of Declarant and each Owner to be used for the conducting of construction activities on a Lot or Common Area, including the storage of construction materials. This easement shall be used only as and when necessary to facilitate the construction, by Declarant or an Owner, of improvements on a Lot or the Common Area. In using and taking the benefits of this easement, Declarant, or its designate, and Owners or their designates shall use their best efforts to

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minimize any land, improvements, or vegetation disturbance within the Common Area, and shall restore such land, improvements and vegetation therein to a condition substantially as that which existed prior to such disturbance. Should Declarant, its designate, or an Owner or their designate fail to restore the disturbed Common Area, as required above, the Association may restore the land and vegetation to the required condition and Declarant, its designate, or Owner, as the case may be, shall indemnify the Association for the reasonable expenses incurred in performing such restoration. When any Owner seeks to take advantage of the easement herein conveyed, such Owner's rights of use shall be restricted to that Common Area which shall be reasonably proximate to his Lot.

Section 4. Easement for Minor Encroachments. Each Lot and the Common Area shall be subject to a perpetual easement for the encroachment of initial improvements constructed on an adjacent Lot.

Section 5. Emergencies and Entrance. Each Lot shall be subject to an easement for entry by the Association for the purpose of correcting, repairing, or alleviating any emergency condition which arises upon the Lot and/or that endangers the Common Area, any other Lot, or any improvement thereto

ARTICLE IV
COVENANT FOR ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. Each Lot Owner (by acceptance of a deed to a Lot), hereby covenants and agrees to pay to the Association:

- (a) the annual Assessments;
- (b) any special Assessments; and,
- (c) fines.

Notwithstanding any provision herein to the contrary, until a Lot becomes a Lot in Use, the Assessment for such Lot shall be ten percent (10%) of the Assessment of a Lot in Use. All Assessments shall be established and collected, from time to time, as hereinafter provided.

To the extent allowed by law the annual and special Assessments, together with interest, costs, fines, and reasonable attorney's fees incurred by the Association in connection therewith, shall be a charge and a continuing lien upon the Lot against which such Assessment is made.

Section 2. Purpose of Assessments. The Assessments levied by the Association shall be used exclusively for the payment of Common Expenses and for the establishment of reserves for future needs.

Section 3. Amount of Assessment.

(a) Annual Assessment. Until January 1, 2010, the annual Assessment shall not exceed \$500.00 for each Lot in Use, the exact amount of which shall be determined, from time to time, as provided in subsection (d) of this Section 3.

(b) Increase by Association. From and after December 31, 2009, the annual Assessment for any year may be increased by the Board, without a vote of the Members, by a percentage not in excess of ten percent (10%) of the previous year's annual Assessment.

(c) Increase by Members. From and after December 31, 2007, the annual assessment may be increased by a percentage greater than ten percent (10%) by the affirmative vote of at least two-thirds (2/3) of each class of Members who are voting, in person or by proxy, at a duly called special meeting as provided in the Bylaws.

(d) Criteria for Establishing Annual Assessment. The Association is required to establish and maintain an adequate reserve fund for the Common Expenses. The fund shall be maintained out of annual Assessments for Common Expenses. In establishing the annual Assessment for any year, the Board shall set the annual Assessment high enough to cover all current Common Expenses, any accrued debts, and reserves for future needs.

(e) Working Capital Fund. At the time of closing of the sale of each Lot by the builder, a sum equal to 1/4 of the annual assessment for each Lot shall be collected from the purchaser and transferred to the Association 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.

Section 4. Special Assessments. In addition to the annual Assessment, the Association may levy, in any Assessment year, a special Assessment, applicable to that year only, for the purpose of defraying, in whole or in part, the costs of any construction, maintenance, reconstruction, repair or replacement of any improvement or vegetation upon the Common Area, including the necessary fixtures and personal property related thereto; provided, however, any such Assessment shall have the assent of at least two-thirds (2/3) of each class of Members who are voting, in person by

proxy, at a duly called special meeting as provided in the Bylaws.

Section 5. Uniform Rate of Assessment. Both annual and special Assessments shall be fixed at a uniform rate for all Lots, subject, however, to the reduced rate established in Section 1 of this Article for any Lot which is not a Lot in Use. All Assessments shall be collected on an annual basis, unless otherwise provided by the by the Board.

Section 6. Date of Commencement of Annual Assessments: Due Dates. Unless otherwise provided by the Board, each annual Assessment shall be due on the first day of the calendar year or the first day of the month next following the date in which the Lot first becomes a Lot in Use. The first annual Assessment for each Lot shall be adjusted according to the number of months remaining in that calendar year. Upon request of a Member the Association shall issue a certificate setting forth whether the Assessments have been paid. A properly executed certificate shall be binding upon the Association as of the date of its issuance. A reasonable charge shall be made by the Association where more than one certificate is issued in a calendar year as to a Lot.

Section 7. Effect of Nonpayment of Assessments. Any Assessment or other charge not paid when due shall be delinquent. If the Assessment is not paid within thirty (30) days after the due date, a late fee of \$20.00 shall be assessed. To the extent allowed by law, the Association may bring an action at law against the Owner to collect such delinquent Assessment, along with any fines and reasonable attorney's fees of any such action (collectively hereinafter called additional charges), or foreclose its lien against the Lot for such Assessment and additional charges. No Owner may waive or otherwise escape liability for the Assessments and other charges provided for herein by non-use of the Common Area or abandonment of his Lot.

Section 8. Subordination of the Lien to Mortgages. The lien of the Assessments provided for herein shall be subordinate to the lien of any first deed of trust against the Lot. The sale or transfer of any Lot shall not affect the Assessment lien; however, the sale or transfer of any Lot pursuant to the foreclosure of such deed of trust, or any proceeding in lieu thereof, shall extinguish the lien of such Assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any Assessment thereafter becoming due or from the lien thereof.

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Section 9. Fines Designated as Assessments. To the extent allowed by law the Board may impose fines against any Lot for violation of this Declaration, the Articles or Bylaws, and such fines shall be treated as an Assessment otherwise due to the Association, and, as such, shall be the personal obligation of the Lot Owner and a lien against the Owner's Lot. Fines shall be paid not later than thirty (30) days after notice of the assessment of the fines. These fines shall not be construed to be exclusive and shall exist in addition to all other rights and remedies to which the Association may be otherwise legally entitled. The fines that the Board may impose shall be as follows:

(a) First non-compliance or violation: a fine not in excess of Fifty Dollars (\$50.00).

(b) Second or succeeding non-compliance or violation: a fine not in excess of One Hundred Dollars (\$100.00).

(c) Third and subsequent non-compliance or violations that are of a continuing nature, a fine not in excess of One Hundred Dollars (\$100.00) for each week of continued violation or non-compliance.

Section 11. Utility Charges for the Common Area. The Association shall pay any and all fees, charges and expenses arising by virtue of the use of utilities provided to and used in connection with any of the Common Area and improvements thereon. Such costs and expenses shall be a Common Expense.

ARTICLE V INSURANCE

Section 1. Common Area Policies. All insurance policies upon the Common Area shall be for the benefit of the Association, the Owners and their mortgagees, as their interest may appear.

Section 2. Association Coverage. The Board shall procure and maintain liability insurance insuring each Board member, the officers and the Association against any liability to the public or to Owners (and their invites, agents and employees) arising out of or incident to the ownership and/or use of the Common Areas, or such other areas for which the Association is responsible. The amount of such liability insurance shall be determined by the Board but, in no event, shall be less than \$1 million per occurrence with regard to the Association and each individual director and officer. The Board shall also obtain such other insurance coverage as it determines, from time to time, to be desirable and reasonable including, without limitation, fire and other hazards insurance,

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with extended coverage endorsement, equal to the insurable replacement value on any building or structure owned by the Association and located within the Common Area. Premiums upon insurance policies obtained by the Board shall be a Common Expense.

Section 3. Fidelity Bond. All persons responsible for or authorized to expend funds or otherwise deal in the assets of the Association, shall first be bonded by a fidelity insurer to indemnify the Association for any loss or default in the performance of their duties in an amount equal to at least one-half the total annual Assessment. The cost of such coverage and bonds shall be a Common Expense.

Section 4. Proceeds. The proceeds of all contracts of insurance purchased by the Association shall be payable to the Association.

ARTICLE VI
ARCHITECTURAL AND APPEARANCE CONTROL

No site preparation or construction, erection or installation of any exterior improvements including, but not limited to, a house, outbuilding, sign, fence, screen (whether by vegetation or structures) outside lighting, walk, driveway, antenna, satellite dish, solar panel, window treatment, decorative lawn ornaments, number, name sign or other structure or planting shall be constructed, erected, installed or planted upon any Lot, or the exterior of the house, or other structure thereon, until the plans and specifications showing the nature, kind, shape, height, materials, floor plans, color scheme, and location with respect to topography and finished ground elevation, and other specifics thereof, shall have been submitted to and approved, in writing, by the Architectural Committee.

The Architectural Committee may refuse to approve any such exterior alterations or additions to a Lot unless such alterations or additions are in harmony with existing structures and improvements within Summerdale, as to style, shape, color and size. However, this shall not be construed to mean that the Architectural Committee is required to approve a proposed alteration or addition that meets this criteria.

In the event the Architectural Committee shall fail to specifically approve or disapprove the plans and specifications submitted in final, accurate and complete form, within thirty (30) days after its receipt thereof, such plans and specifications shall be deemed approved.

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There is specifically reserved unto the Architectural Committee the right of entry and inspection upon any Lot for the purpose of determining whether the work being undertaken conforms with the approved plans and specifications and is in a good and workmanlike manner.

The Association is specifically empowered to enforce the provisions of this Declaration by any legal or equitable remedy, and in the event it becomes necessary to resort to litigation to determine the propriety of any constructed improvement, or to remove any unapproved improvements, the prevailing party shall be entitled to recover all court costs, expenses and reasonable attorney's fees in connection therewith. The Association, Declarant, Architectural Committee or any officer, employee, director or member thereof shall not be liable for damages to any persons submitting plans and specifications for approval by reason of mistake in judgment, negligence or nonfeasance arising out of or in connection with the approval, disapproval or failure to approve any plans and specifications. Every person who submits plans and specifications for approval agrees, by submission of such plans and specifications, that he will not bring any action or suit against the Association, Declarant, or Architectural Committee to recover any such damages.

ARTICLE VII
LOT USE RESTRICTIONS

Section 1. Rules and Regulations. The Board shall, from time to time, formulate, publish, amend and enforce reasonable rules and regulations concerning the use and enjoyment of the Common Area.

Section 2. Use. Each Building, Lot, and/or the Common Area shall be used and subject to the following restrictions:

(a) All Buildings and the Common Area shall be used for residential and related purposes. Each Lot shall be used as a single-family residence, provided, nothing herein shall preclude Declarant, or its assigns, from using a residence as a temporary office or model home, subject to the laws of the Town.

(b) No outside clothes lines, television or other communication antenna or dish, except as herein provided, shall be located upon a Lot by an Owner. A dish antenna not exceeding Twenty-four (24) inches in diameter may be installed at a location on a Lot approved by the Board.

(c) Standard size realtor's "For Sale" or "For Rent" sign, may be placed on a Lot within public view without the prior approval of

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the Board subject to the laws, ordinance or regulations of the Town. Declarant (or the assignee of the rights of the Declarant) may erect and maintain temporary signs for its temporary offices and for the marketing of the Lots and homes in Summerdale.

(d) No construction materials, equipment, machinery or any other things used for construction purposes shall be stored on a Lot, except as may relate to construction on the Lot or for longer than the length of time reasonably necessary for such construction.

(e) Nothing shall be kept, and no activity shall be carried on, within a residence or on a Lot or the Common Area, which will increase the rate of insurance for the Common Area or result the cancellation of any such insurance, or which will be in violation of any law, ordinance, or regulation.

(f) All garbage receptacles and containers shall be properly screened from public view, except as otherwise required by regulations of the Town.

(g) Each Owner shall provide adequate off-street parking areas for his motor vehicles and those of other members of the household, and shall not permit any such vehicles to be regularly parked on the streets within Summerdale.

(h) No inoperative vehicle, boat, trailer, camper or other recreational vehicle shall be regularly parked on a Lot except within a garage which is part of such Lot.

(i) The pursuit of hobbies or other activities which tend to cause disorderly, unsightly or unkept conditions, shall not be permitted or undertaken on a Lot.

(j) Not more than two household pets shall be kept or permitted to remain on a Lot, and then only if they are not raised or kept for commercial purposes.

(k) No immoral, noxious, offensive or loud activities shall be carried on upon the Lot; each Owner shall refrain from any act or use of the Lot which could reasonably cause embarrassment, discomfort, annoyance, or become a nuisance, to the residents of Summerdale; and, no industry, business trade, occupation or profession of any kind, whether commercial or otherwise, shall be conducted on a Lot, except that Declarant, and/or its assigns, may use the Lot for sales or display purposes as herein above provided.

(l) No trailer, tent, shack, barn or other building shall be erected or placed on any Lot covered by these covenants. No detached garage shall at any time be used for human habitation

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temporarily or permanently. Temporary structures are prohibited.

(m) No additional driveways or sidewalks may be installed on any Lot without the prior written approval of the Architectural Committee of the Association.

(n) Mailboxes shall not be altered in any way, with the exception of repairs to restore these items to their original appearance if damaged or discolored.

(o) Grass shall be mowed every week and flowerbeds shall be kept free of weeds. In the event this work is not done, the Association shall have the authority, but not the obligation, to perform this work in lieu of the Owner and assess the cost to the Owner through the Association, including any legal fees incurred by the Association. In addition, any alteration of the landscaping must be approved by the Architectural Committee of the Association.

(p) No yard art, including plastic flowers, which is visible from the street may be displayed on any Lot without the prior written approval of the Architectural Committee of the Association.

(q) No household furniture intended for interior use may be kept or stored on porches or yards.

Section 3. Governmental Regulations. All governmental laws, rules and regulations applicable to a Lot shall be observed at all times by the Owner. In the event of any conflict between any provision of such governmental laws, rules and regulations, and any provision of this Declaration, the more restrictive provision shall apply.

ARTICLE VIII MEMBERSHIP

Every person who is a record owner of the fee simple, or an undivided fee simple, interest in a Lot in Summerdale, which by this Declaration is subject to Assessment by the Summerdale Homeowner's Association, shall be a Member of the Association. The foregoing is not intended to include Persons who hold an interest in any Lot merely as security for the performance of an obligation. Membership shall be appurtenant to, and may not be separated from, ownership of a Lot which is subject to Assessment by the Association.

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ARTICLE IX
VOTING RIGHTS

The Summerdale Homeowner's Association shall have two classes of membership:

Class A. Class A Members shall be all Owners, with the exception of Declarant (or the assignee of the rights of the Declarant) and shall be entitled to one (1) vote for each lot owned. When more than one person holds an interest in any Lot, all such persons shall be Members and the vote for such Lot shall be exercised as they determine, but in no event shall more than one (1) vote be cast with respect to any Lot. Cumulative voting shall not be permitted.

Class B. The Class B member shall be the Declarant (or the assignee of the rights of the Declarant) who shall be entitled to ten (10) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(a) when the total votes outstanding in Class A membership equal the total votes outstanding in Class B membership; but provided that Class B membership shall be reinstated if thereafter, and before the time stated in subparagraph (b), below, additional lands are annexed to the Property without the assent of the Class A Members on account of the development of such additional lands by the Declarant (or the assignee of the rights of the Declarant), all as provided for in this Declaration; or,

(b) January 1, 2012.

ARTICLE X
GENERAL PROVISIONS

Section 1. Enforcement. The Association, Declarant (or the assignee of the rights of the Declarant) and any Owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association, Declarant or any Owner to enforce any covenant or restriction herein contained shall, in no event, be deemed a waiver of the right to do so thereafter.

Section 2. Severability. Invalidity of any one of these covenants or restrictions by judgement or court order shall in no way affect any other provision which shall remain in full force and effect.

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Section 3. Amendment. The covenants, conditions and restrictions of this Declaration shall run with and bind the Properties, Lots and the Common Area for a term of thirty (30) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended by an instrument approved by not less than three-fourths (3/4) of each Class of Members, provided the Board may amend this Declaration, at any time and without such consent, to correct any obvious error or inconsistency.

All amendments shall be effective from the date of their recording in the Wake County Registry, provided, however, that no such instrument shall be valid until it has been indexed in the name of the Association. When any instrument purporting to amend the Declaration has been certified by the Board of Directors, recorded, and indexed as provided by this Section, it shall be conclusively presumed that such instrument constitutes a valid amendment as to all Owners and the Lots.

Section 4. Other Amendments. Anything herein to the contrary notwithstanding, Declarant, without the consent or approval of the Members, shall have the right to amend this Declaration to conform it to the requirements of any law or regulation or governmental agency or corporation having jurisdiction over the Properties or to qualify the Properties, or any Lots and improvements thereon, for mortgage or improvement loans made, insured or guaranteed by a governmental or quasi-governmental agency.

Section 5. Annexation of Additional Properties. At any time during the effective term of this Declaration, Declarant may annex and subject to this Declaration additional real property which has been or will be developed as a part of the general plan of development for Summerdale as follows:

(a) Additions by Declarant. If prior to January 1, 2012, Declarant shall develop any land adjoining the Properties, such additional land may be annexed by Declarant without the consent of Members.

(b) Other Additions. Annexation, by Declarant or others, of additional land other than that described in subsection (a) above, shall require the assent of two-thirds (2/3) of the votes of each class of Members, at a special meeting of Members.

(c) Declaration of Annexation. The additions authorized under this section shall be made by filing of record a declaration of annexation, with respect to the additional land, which shall extend the scheme of the covenants, conditions and restrictions of this

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Declaration to such land or by adopting this Declaration in whole or in part by reference and may contain such complementary additions and modifications of the covenants, conditions and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the annexed land and are not inconsistent with the scheme of this Declaration.

(d) Conveyance of Common Area. Subsequent to the recording of the declaration of annexation, but prior to the conveyance of the first Lot within the annexed land, Declarant, or others, shall deliver to the Association a deed, conforming to Article II, Section 3, conveying any Common Area within the lands annexed.

Section 6. Leasing. No residence shall be leased for transient or hotel purposes, nor may any owner lease less than the entire residence nor shall any lease of a residence be for a period of less than twelve (12) months. Any lease must be in writing and provide that the terms of the lease and occupancy of the residence shall be subject to this Declaration and the Bylaws and any failure by a lessee to comply with such shall be a default under the lease

Section 7. Lender's Rights. So long as any Lender holds any deed of trust upon a Lot, then upon its written request to the Association, identifying the Owner and the Lot, Lender shall be entitled to timely written notice delinquency in the payment of any Assessment owed by the Owner of such Lot, on which it holds the mortgage;

Section 8. Conflicts. In the event of a conflict between the terms and provisions of this Declaration and the Bylaws or Articles, the terms and provisions of this Declaration shall control. In the event of a conflict between the terms and provision of the Bylaws and the Articles, the terms and provisions of the Articles shall control.

Section 9. Gender and Grammar. The singular, wherever used herein, shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply, either to corporations or other entities or to individuals, men or women, shall, in all cases, be assumed as though in each case fully expressed.

Section 10. Authorized Action. All action that the Association is allowed to take under this Declaration shall be authorized actions of the Association if approved by the Board in the manner provided in the Bylaws, unless the terms of this Declaration or the Articles or Bylaws expressly require the approval of the Members.

Section 11. Binding Effect. All of the terms, conditions

provisions and limitations of this Declaration shall be binding upon, and inure to the benefit of, Declarant, the Association, each Owner, and its or his successors, assigns, invites, agents, tenants, employees and guests, as the case may be.

Every Lot shall be subject to an easement for entry and encroachment by Declarant, for a period of not to exceed eighteen (18) months following conveyance of a Lot to an Owner, for the purpose of correcting any problems that may arise regarding grading, drainage, streets and utility lines installed or constructed by or for Declarant. Declarant, upon making such entry for such purpose shall restore the affected Lot to as near the original condition as possible.

IN WITNESS WHEREOF, the undersigned has caused this instrument to be executed by its general partners, as of the ___ day of November, 2006.

Douglass & Barham
A general partnership

By: *Clyde A. Douglass III*
Clyde A. Douglass III, General Partner

By: *Charles D. Barham, Jr.*
Charles D. Barham, Jr., General Partner

By: Barham Partners, a general partnership
General Partner

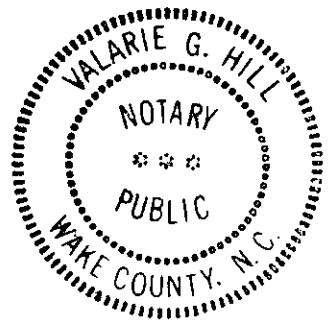
By: *Charles D. Barham, Jr.*
Charles D. Barham, Jr.
Managing General Partner of
Barham Partners

STATE OF NORTH CAROLINA
WAKE COUNTY

I, VALARIE G. HILL, a Notary Public for the County and State aforesaid, certify that Clyde a Douglass, III, and Charles D. Barham, Jr., general partners of Douglass & Barham, a North Carolina general partnership, personally came before me this day and acknowledged the due execution of the foregoing instrument. Witness my hand and notarial seal/stamp, this 28 day of November, 2006.

Valarie G. Hill
Notary Public

My Commission expires: 10-22-07

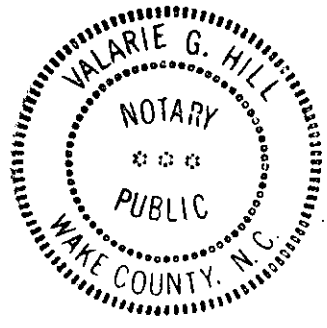


STATE OF NORTH CAROLINA
WAKE COUNTY

I, VALARIE G. HILL, a Notary Public for the County and State aforesaid, certify that Charles D. Barham, Jr, as managing general partner of Barham Partners, a North Carolina general partnership and a general partner of Douglass & Barham, a North Carolina general partnership, personally came before me this day and acknowledged the due execution of the foregoing instrument. Witness my hand and notarial seal/stamp, this the 28 day of November, 2006.

Valarie G. Hill
Notary Public

My commission expires: 10-22-07

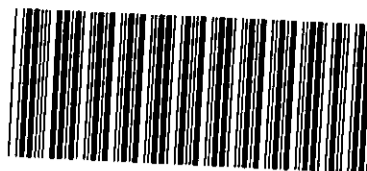


-19-

Exhibit A

Summerdale Phase 1

Beginning at an iron in the western right of way line of Bridge Street, said iron marking the northeast corner of the property of Norton Development, LLC, said iron also being control corner N=667898.21, E=2057541.53 NAD 83; thence with the northern line of Norton Development and J. H. Grimes N 89 degrees 02 minutes 39 seconds W 215.05 feet to an iron, the northwest corner of Grimes and the northeast corner of M. E. H. Tobias; thence with the northern line of Tobias N 89 degrees 21 seconds 26 minutes W 98.05 feet to an iron, a northwest corner of Tobias and a northeast corner of D. and R. T. Brisson; thence with the northern line of Brisson N 88 degrees 37 minutes 01 second W 100.14 feet to an iron, a northwest corner of Brisson and a northeast corner of R. Simmons; thence with the northern line of Simmons N 88 degrees 56 minutes 29 seconds W 185.46 feet to an iron, northwest corner of Simmons and a northeast corner of M. L. V. Bryan et al; thence with the northern line of Bryan and M. B. Lane N 88 degrees 56 minutes 29 seconds W 65.00 feet to an iron; then with the northern line of Lane N 89 degrees 15 minutes 26 seconds W 33.98 feet to an iron, the northwest corner of Lane; thence with western line of Lane S 14 degrees 57 minutes 11 seconds W 155.44 feet to an iron in the northern line of Coley Farm Road; thence with the northern line of Coley Farm Road N 76 degrees 55 minutes 49 seconds W 54.20 feet to an iron; thence with the northern line of Coley Farm Road N 70 degrees 31 minutes 10 seconds W 54.93 feet to an iron; thence with the north line of Coley Farm Road N 63 degrees 32 minutes 41 seconds W 72.33 feet to an iron; thence with the northern line of Coley Farm Road N 58 degrees 11 minutes 27 seconds W 92.94 feet to an iron; thence N 39 degrees 16 minutes 14 seconds E 167.37 feet to an iron; thence with the arc of a circle having a radius of 200 feet 20.72 feet to an iron bearing S 53 degrees 41 minutes 50 seconds and 20.71 feet from the previous iron; thence with the arc of a circle having a radius of 25 feet 35.12 feet to an iron bearing N 83 degrees 05 minutes 36 seconds E 32.30 feet from the previous iron; thence with arc of a circle having a radius of 200 feet 55.84 feet to an iron bearing N 50 degrees 51 minutes 00 seconds E 55.66 feet from the previous iron; thence N 43 degrees 20 seconds 52 minutes W 109.36 feet to an iron; thence S 89 degrees 53 minutes 07 seconds E 172.13 feet to an iron; thence N 00 degrees 43 minutes 17 seconds E 80.09 feet to an iron; thence N 03 degrees 43 minutes 57 seconds E 50.10 feet to an iron; thence N 00 degrees 06 seconds 53 minutes E 95.83 feet to an iron; thence S 89 degrees 53 minutes 22 seconds E 444.93 feet to an iron; thence with the western property line of A. K. and L. E. Mims S 23 degrees 28 minutes 12 seconds E 30.51 feet to an iron; thence S 89 degrees 52 minutes 58 seconds E 160.66 feet to an iron in the western right of way line of Bridge Street; thence with the western right of way line of Bridge Street S 22 degrees 17 minutes 04 seconds E 58.03 feet to an iron; thence with the western right of way line of Bridge Street S 17 degrees 29 minutes 48 seconds E 95.94 feet to an iron; thence with the western right of way line of Bridge Street S 10 degrees 03 minutes 13 seconds E 52.60 feet to an iron; thence with the western right of way line of Bridge Street N 05 degrees 18 minutes 59 seconds W 13.46 feet to an iron; thence with the western right of way line of Bridge Street S 05 degrees 18 minutes 59 seconds E 30.90 feet to an iron; thence with western right of way line of Bridge Street S 01 degrees 12 minutes 07 seconds E 99.49 feet to an iron; thence with the western right of way line of Bridge Street S 00 degrees 59 minutes 08 seconds W 56.55 feet to the point and place of beginning, containing 7.906 acres according to a plat prepared by B. L. Scott & Co. dated 05-02-2006 and recorded in Book of Maps 2006 at page 2393, Wake County Registry.



BOOK:012282 PAGE:01228 - 01247

**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**

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