

Cross Reference: Book 9515,
Page 2641, Wake County Registry

Return to:

Elizabeth C. Belden
Duke Realty Corporation
3950 Shackleford Road
Suite 300
Duluth, Georgia 30096

**SUPPLEMENTAL DECLARATION OF COVENANTS, CONDITIONS,
RESTRICTIONS, RESERVATIONS AND EASEMENTS
FOR WALNUT CREEK BUSINESS PARK**

THIS SUPPLEMENTAL DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS, RESERVATIONS AND EASEMENTS FOR WALNUT CREEK BUSINESS PARK (this "Supplement") is made as of this the 11th day of August, 2004, by **DUKE REALTY LIMITED PARTNERSHIP**, an Indiana limited partnership doing business in North Carolina as Duke Realty of Indiana Limited Partnership (the "Declarant"), and consented to by (i) **GREENTREE, INC.**, a North Carolina corporation ("Greentree"), and (ii) **GLOVER-HARRIS NO. II, L.L.C.**, a North Carolina limited liability company ("Harris"), as the current owners of certain property that is subject to the Declaration (as hereinafter defined) (also collectively known as the "Additional Owners").

WITNESSETH:

WHEREAS, Declarant has heretofore acquired fee simple title to a tract or tracts of land containing approximately 92 acres and located in the City of Raleigh, Wake County, North Carolina, and known as Walnut Creek Business Park, more particularly described in the Declaration (these tracts of land together with any Additional Property, shall be referred to herein collectively, as the "Property"); and

WHEREAS, Declarant recorded that certain Declaration of Covenants, Conditions, Restrictions, Reservations and Easements for Walnut Creek Business Park in Book 9515, Page 2641 – 2875, Wake County Registry (the Declaration of Covenants, Conditions, Restrictions, Reservations and Easements and all amendments thereto shall be referred to herein as the "Declaration") in order to subject the Property to certain covenants, conditions, restrictions, reservations and easements as set forth therein; and

WHEREAS, subsequent to the recordation of the Declaration a portion of the Property known as Lot 6 and consisting of approximately 4.66 acres was conveyed by Declarant to Greentree by deed recorded in Book 9515, Page 2676, Wake County Registry (the "Greentree Property"); and

WHEREAS, subsequent to the recordation of the Declaration a portion of the Property known as Lot 7 and consisting of approximately 20.21 gross acres was conveyed by Declarant to Harris by deed recorded in Book 0331, Page 1632, Wake County Registry (the "Harris Property"); and

WHEREAS, Section 1.1(s) of the Declaration provides Declarant the right to file a Supplemental Declaration to subject additional real property to the terms of the Declaration and/or to impose expressly or by reference, additional restrictions and obligations on the Property, or portions thereof.

WHEREAS, Declarant hereby declares that the Declaration is hereby revised to, among other things, specifically designate certain Common Areas created by Declarant, and to provide for the maintenance of the Common Areas by the Association, and the payment for such maintenance as provided herein.

NOW, THEREFORE, Declarant hereby declares that the Property is and shall be held, owned, conveyed, hypothecated, encumbered, leased, rented, used, occupied, improved and otherwise disposed of subject to the provisions of the Declaration, as amended, modified, and supplemented hereby.

1. Common Areas. Section 2.2 of the Declaration provides Declarant the right to designate Common Areas on any portion of the Property owned by Declarant. The Additional Owners hereby join in this Supplement to provide their consent to designating certain portions of the Property owned by them as Common Areas. In accordance therewith, the Common Areas as shown on Exhibit A attached hereto and made a part hereof are hereby designated by Declarant.

2. Owners Association. Under Section 3.1 of the Declaration, an Association was to be created to be responsible for the management, maintenance, operation and control of the Common Areas. Concurrently herewith, Walnut Creek Owners' Association, Inc. has been duly formed in North Carolina.

3. Management of Common Areas.

(a) In accordance with Section 3.1 of the Declaration, the Common Areas described herein shall be managed, maintained, operated and controlled by the Association.

(b) The Association shall have the right to assess and collect Assessments from the Owners in accordance with the terms and provisions of the Declaration.

(c) Owners shall be responsible for paying Assessments in accordance with the provisions of the Declaration.

4. Easements.

(a) Declarant has created certain cross access easements over and upon portions of the Property (collectively, the "Access Easements") by the recordation of that certain plat recorded in Book of Maps 2002, Page 1117, Wake County Registry (the "Plat"), a portion of such Access Easements are more particularly described in that certain Declaration of Easement recorded in Book 8864, Page 2123, Wake County Registry (collectively, the "Easement Agreement"). The Access Easements provide access over and upon Business Park Drive to and from certain of the Sites to Civic Boulevard.

Declarant and the Additional Owners hereby reaffirm a nonexclusive and perpetual easement and right of access for ingress, egress, and regress over and upon Business Park Drive (the "Easement Area") to and from Civic Boulevard and each Site (as defined in the Declaration) for the benefit of the Property and the present and future owners thereof, and their respective tenants, employees, agents, invitees, licensees, successors, heirs and assigns.

TO HAVE AND TO HOLD, the right, privilege and easement for the purposes stated herein in and upon the aforesaid tract or parcel of land unto the present and future owners of the Property, their heirs, assigns and successors in interest, forever. It being agreed that the easements hereby granted are easements burdening the Easement Area, and running with the title to the portions of the Property encumbered by the Easement Areas.

(b) The Access Easements shall be deemed to be Common Areas as provided in this Supplement. The Association shall manage, maintain, operate and control the Access Easements in accordance herewith.

(c) Upon the recordation of this Supplement, the Easement Agreements shall be deemed terminated, null and void and of no further force and effect, and the easements and the Easement Area granted herein shall be in full force and effect.

5. Amendment of Declaration. Pursuant to Section 11.2 of the Declaration, the Declarant hereby amends the Declaration, as follows:

(a) Section 4.3 of the Declaration is amended by striking the phrase "Section 4.16 of" from the fourth line thereof.

(b) Section 5.8 of the Declaration is hereby deleted in its entirety and replaced with the following language:

"Section 5.8. Assessment Lien and Foreclosure. All sums assessed in the manner provided in this Section but unpaid, together with late fees, interest thereon and the costs of collection, including attorney's fees as provided above, shall become a continuing lien and charge on the Site covered by such assessment, which shall bind such Site when filed of record in the Office of the Clerk of Superior Court for the county in which the Interest of the Owner is located. Such lien may be foreclosed as provided in Section 47F-3-116 of the North Carolina General Statutes. Such lien shall be prior to all other liens and encumbrances on the Property or any Interest except (i) liens and encumbrances (specifically including, but not limited to, a mortgage or deed of trust on the Property or any Interest) recorded in the County real estate records before the filing of the lien for assessments in the Office of the Clerk of Superior Court and (ii) liens for real estate taxes and other governmental assessments or charges against the Property or an Interest; and (iii) the lien and security title of a first priority deed of trust granted by the Owner on its Site, provided, however, from and after the date the holder of such deed to secure debt or its successor or assignee takes possession of the Site or succeeds to the Owner's interest in the Site, whether by deed-under-power, foreclosure, conveyance in lieu of foreclosure or otherwise, such holder or its successor or assignee shall be deemed an Owner of the Site and liable for all assessments on that Site due after that date. Declarant shall have the power to release the assessment lien or to subordinate it to any other lien and such power shall be entirely discretionary with Declarant. Upon the written request of any grantee holding a deed of trust on any Site or part of the Property, Declarant shall report to said grantee any unpaid assessments remaining unpaid on that Site or portion of the Property for longer than thirty (30) days after the same are due. Any grantee holding a deed of trust on any Site or part of the Property affected by the assessment lien may, but shall not be required to, pay any unpaid assessment and upon such payment such grantee shall be assigned the debt and lien securing same, said assignment to be without recourse or warranty."

(c) Section 5.6 of the Declaration is amended by striking the second sentence thereof and replacing such second sentence with the following language:

"An Owner's share of the assessment shall be determined by multiplying the total amount of the assessment by a fraction (rounded to nearest 100th) having as its numerator the acreage owned by the Owner within the Property including that portion situated

within the Common Area, and having as its denominator the total acreage located within the Property. Notwithstanding the foregoing, in an effort to allocate the cost of assessments for Common Areas among the Owners in proportion to the benefit of such Common Areas to such Owners, the allocation of certain shares of such assessments relating to specific Common Areas are set forth on Exhibit A hereto.”

(d) Article V of the Declaration is amended by inserting a new Section 5.10 after Section 5.9 thereof:

“Section 5.10: Administration By Board of Directors. Notwithstanding any provision of this Article V to the contrary, commencing on the date immediately following the date upon which the Class B Control Period shall terminate, the Board of Directors shall perform those acts and obligations, and exercise those rights, reserved to Declarant pursuant to Sections 5.1 through 5.9 above, and Declarant shall be released from performance of such acts and obligations and exercise of such rights as of the date thereof.”

(e) Section 11.1 of the Declaration is amended by adding to the fourth line the word “renew” after the word “automatically” such that the fourth line shall read as follows: “...recording, whereupon this Declaration shall automatically *renew* unless terminated by the agreement....”

6. Execution By Additional Owners. This instrument has been executed by the Additional Owners for the purpose of acknowledging and confirming their agreement with the provisions of this Supplement.

7. Miscellaneous.

(a) Capitalized Terms. Capitalized terms not otherwise defined herein shall be defined as provided in the Declaration.

(b) Law Governing. This Supplement shall be governed by and construed in accordance with the laws of the State of North Carolina. All obligations hereunder are performable in Wake County, North Carolina.

(c) Attorneys' Fees. If any litigation is initiated or defended by the owner of a Site against the owner of another Site relating to this Supplement or the subject matter hereof, the party prevailing in such litigation shall be entitled to recover, in addition to all damages allowed by law and other relief, all court costs and reasonable attorneys' fees incurred in connection therewith.

(d) Successors and Assigns. This Supplement shall be binding upon and shall inure to the benefit of Declarant and its respective legal representatives, successors, heirs, and assigns in ownership of the Sites, however further subdivided, or reconfigured.

(e) Severability. This Supplement is intended to be performed in accordance with, and only to the extent permitted by, all applicable laws, ordinances, rules and regulations. If any provision of this Supplement or the application thereof to any person or circumstance shall, for any reason and to any extent, be invalid or unenforceable, but the extent of such invalidity or unenforceability does not destroy the basis of the bargain expressed herein, the remainder of this Supplement and the application of such provision to other persons or circumstances shall not be affected thereby, but rather shall be enforced to the greatest extent permitted by law.

(f) No Public Dedication: No Third Party Beneficiaries or Consents. This Supplement is not intended, and shall not be construed (a) as a dedication to the public of any interests therein, (b) to give any member of the public, or any party other than as provided herein, any right whatsoever herein or therein or (c) to require any consent or other action of any other party other than as expressly provided herein to any amendment to or waiver of any provision of this Supplement.

(g) Number and Gender, Captions and References. As the context of this Supplement may require, pronouns shall include all persons, the singular number shall include the plural and the neuter shall include the masculine and the feminine gender. Section and subsection headings in this Supplement are for convenience of reference only and are not intended, to any extent and for any purpose, to limit or define any section or subsection hereof. Whenever the word "hereof", "herein", "hereunder" or a word of similar import is used in this Supplement, it shall be construed as referring to this Supplement in its entirety rather than to a particular section or provision, unless the context specifically indicates to the contrary. Any reference to a particular "section" shall be construed as referring to the indicated section of this Supplement.

(h) Waiver. This Supplement may not be waived orally or impliedly, but only by written document executed by the party against which such waiver is sought. Neither the failure of a party to complain of any violation of this Supplement, regardless of how long such failure continues, nor the failure of a party to invoke (or the election by a party not to invoke) any right, remedy or recourse for a violation hereof, shall extinguish, waive or in any way diminish the rights, remedies and recourses of the party with respect to such violation. No waiver by a party of any provision of this Supplement shall be deemed to be a waiver of any other provision hereof.

(i) Due Execution: Authority: Binding Effect. The undersigned hereby warrant and represent that (i) they have full right, power and authority to execute and deliver this Supplement on behalf of the party indicated, (ii) that this Supplement has been duly executed and delivered on behalf of the party indicated and (iii) this Supplement constitutes the valid and binding agreement of the party so indicated.

(j) Counterparts. This Supplement shall be executed on the date and year above first written in one or more counterparts, each of which shall be an original and all of which taken together shall be one and the same instrument.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, this Supplement has been executed by the undersigned as of the day and year first above written.

DECLARANT:

DUKE REALTY LIMITED PARTNERSHIP,
an Indiana limited partnership doing business in North
Carolina as Duke Realty of Indiana Limited Partnership

By: DUKE REALTY CORPORATION, an
Indiana corporation, its sole general partner

By: *[Signature]*
Name: **H. ANDREW KELTON**
Title: **SR. VICE PRESIDENT**

STATE OF North Carolina

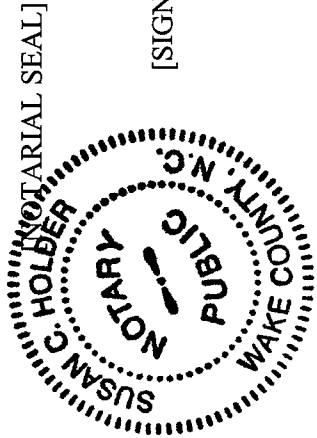
COUNTY OF Wake

I, Susan C. Holder, a Notary Public of the County and State aforesaid, certify that
H. Andrew Kelton, as SR. Vice President of Duke Realty Corporation, the sole general
partner of DUKE REALTY LIMITED PARTNERSHIP, an Indiana limited partnership doing business in
North Carolina as Duke Realty of Indiana Limited Partnership, personally appeared before me this day
and acknowledged the execution of the foregoing instrument as the act and deed of said limited
partnership.

Witness my hand and official seal this 31 day of August, 2004.

Susan C. Holder
Notary Public

My Commission Expires: 23 November 2008



[SIGNATURES CONTINUED ON FOLLOWING PAGE]

GREENTREE:

As provided in Paragraph 6 hereof, the undersigned does hereby acknowledge and consent to the terms of the within Supplemental Declaration.

GREENTREE, INC.

By: SARROW MORISETTE Stockdale
Print Name: DARROW MORISETTE Stockdale
Title: President - Greentree

STATE OF NORTH CAROLINA

COUNTY OF GUILFORD

I, MARCELL L. ISAACSON, a Notary Public within and for said County and State, do hereby certify that DARROW MORISETTE Stockdale personally came before me this day and acknowledged that he/she is the President of GREENTREE, INC., a North Carolina corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its _____ President.

WITNESS my hand and official seal, this the 11 day of AUGUST, 2004.

Marc L. Isaacson

Notary Public

My Commission Expires: 9-17-06



[NOTARIAL SEAL]

HARRIS:

As provided in Paragraph 6 hereof, the undersigned does hereby acknowledge and consent to the terms of the within Supplemental Declaration.

GLOVER-HARRIS NO. II, L.L.C., a North Carolina limited liability company

By: Wood Ham
Print Name: Worth Harris
Title: Member

STATE OF NORTH CAROLINA

COUNTY OF WAKE

I, ⁵⁶⁰⁷ JURGENSEN, a Notary Public within and for said County and State, do hereby certify that WORTH HARRIS personally came before me this day and acknowledged that he/she is MEMBER of GLOVER-HARRIS NO. II, L.L.C., a North Carolina limited liability company, and that by authority duly given and as the act of the limited liability company, the foregoing instrument was signed in its name by its MEMBER.

WITNESS my hand and official seal, this the 17 day of AUGUST, 2004.

Scott Jurgensen
Notary Public

My Commission Expires: 5-19-2007

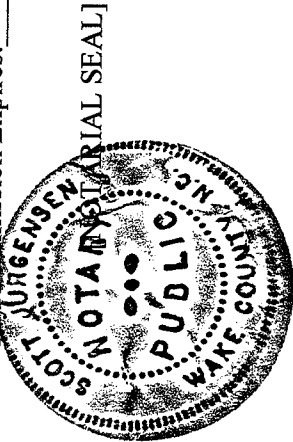
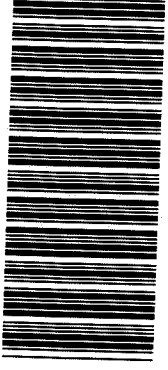


EXHIBIT A

COMMON AREA DESCRIPTIONS AND BENEFICIARY DESIGNATIONS

| Beneficiary (See Note 1) | Description | Common Area |
|---|---|--|
| All Lots | Sign and Landscaping within 10' of sign. Excludes Irrigation served from Lot 1-Phase 1 and any Lot 1-Phase 1 parking areas. | 1 Monument Sign |
| Lot 1-Phase 1, Lot 2-Phase 1 | 60' truck maneuvering area between Lot 1-Phase 1 and Lot 2-Phase 1. Excludes 60' of concrete north and south of Private Driveway. | 2 Private Driveway between Lot 1-Phase 1 and Lot 2-Phase 1 |
| Lot 3-Phase 3, Lot 4-Phase 3, Lot 5-Phase 4 | City of Raleigh required wet pond for stormwater management. | 3 Stormwater Pond at west end of Business Park Drive |
| Lot 7-Phase 4 (7%), Lot 6-Phase 4 (7%), Lot 1-Phase 5 (7%), Lot 3-Phase 3 (26%), Lot 4-Phase 3 (26%), Lot 5-Phase 4 (27%) | Extends west to the end of Business Park Drive from the west end of City of Raleigh right of way. See Note 2 and Note 3. | 4 Private Street - Business Park Drive |
| Lot 7-Phase 4 (43%), Lot 1-Phase 5 (43%), Lot 6-Phase 4 (14%) | Extends from Business Park Drive north to end of cul-de-sac. Excludes Lot 1-Phase 5 water line. See Note 2 and Note 3. | 5 Private Road between Lot 6-Phase 4 and Lot 7-Phase 4 |
| All Lots | Stormwater outfall from north end of Civic Boulevard extending north to edge of Walnut Creek Business Park. | 6 Civic Boulevard Stormwater Outfall. |
| All Lots | Includes all private features not maintained by public entities such as Wake County, the City of Raleigh, NCDOT or others. See Note 3 and Note 4. | 7 City of Raleigh Streets |

Note 1 – All Common Area maintenance shared equally unless noted as a percent as to how much is shared by each.
 Note 2 - Private Roads and Private Streets include all pavement, curbs, sidewalks and utilities from the farthest outside edge of sidewalk, curb, or asphalt (whichever is farthest from the road or street centerline) unless specifically noted otherwise.
 Note 3 - Each Lot is responsible for the landscaping extending to the street.
 Note 4 - Includes any stormwater outfalls necessary for identified future City of Raleigh Street.



BOOK:010994 PAGE:02129 - 02138

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 is of Susan C. Holder
Marc L. Isaacson
Scott Jurgensen

____ 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